[redacted]

(17,955.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 470.

MARTHA J. SWERINGEN, PLAINTIFF IN ERROR,

vs.

THE CITY OF ST. LOUIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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a Supreme Court of the United States, October Term, 1900.

MARTHA J. SWERINGEN, Plaintiff in Error,
vs.
THE CITY OF ST. LOUIS and JUSTIN E. JOY, Defendants in Error. } No. —.

Comes now Martha J. Sweringen, plaintiff in error, by her counsel, and respectfully represents that she feels herself to be aggrieved by the proceedings and judgment of the supreme court of the State of Missouri in the above-entitled cause, and assigns error thereto as follows:

1. The court erred in said cause in deciding that the court below erred in admitting the patent to Louis Labeaume or his legal representatives in evidence as any evidence of title to the land in suit in said cause.

2. The court erred in said cause in construing the United States patent to Louis Labeaume and in deciding that the patent to Louis Lebeaume or his legal representatives did not purport to convey the land in suit in said cause.

3. The court erred in said cause in deciding that said Louis Labeaume was not a riparian owner, and that his heirs or grantees could not recover the tract of land in suit as an accretion in said cause.

4. The court erred in said cause in deciding that the plaintiff in error had no paper title to the land in suit in said cause.

5. The court erred in said cause in deciding that the court below erred in overruling the objections of defendants to the patent to Louis Labeaume or his legal representatives as irrelevant and immaterial and not tending to support the issue in said cause
b and not showing the plaintiff was a riparian owner and admitting said patent in evidence in said cause.

6. The court erred in said cause in deciding that there was no evidence to sustain the judgment of the court below in said cause.

7. The court erred in said cause in reversing the judgment of the court below in said cause.

8. The court erred in said cause in rendering judgment in favor of the defendants in said cause.

Wherefore the said plaintiff in error prays the honorable court to examine and correct the errors assigned and for a reversal of the judgment of the supreme court of the State of Missouri entered in the above-entitled cause, and for an affirmance of the judgment of the court below, the circuit court of the city of St. Louis, Missouri, in said cause.

MARTHA J. SWERINGEN,
By E. P. JOHNSON,
THOS. A. RUSSELL,
G. A. FINKELNBURG,
Her Attorneys.

[Endorsed:] No. —. Supreme Court of the United States. Martha J. Sweringen, pl'ff in error, *vs.* The City of St. Louis, def't in error. Assignment of error.

c UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Missouri, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Martha J. Sweringen, plaintiff and respondent, and The City of St. Louis and Justin E. Joy, defendants, and the said City of St. Louis, appellant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Martha J. Sweringen, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court of the United States, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville Weston Fuller, Chief Justice of the Supreme Court of the United States, this third day of October, in the year of our Lord one thousand nine hundred.

Seal of the United States Circuit Court, Central Division, for the Western District of Missouri.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the central division of the western judicial district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk of said Circuit Court.

Allowed by—
JAMES B. GANTT,
Judge and Chief Justice of the Supreme Court of the State of Missouri.

d *Return to Writ.*

STATE OF MISSOURI, ss:

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled cause, together with all things concerning the same.

Seal of the Supreme Court of Missouri.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court of Missouri, at the city of Jefferson, this 23rd day of October, A. D. 1900.

JNO. R. GREEN, *Clerk.*

[Endorsed:] Filed Oct. 3, 1900. Jno. R. Green, clerk.

e The United States of America to The City of St. Louis, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein Martha J. Sweringen is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable James B. Gantt, chief justice and judge of the supreme court of the State of Missouri, this third day of October, in the year of our Lord one thousand nine hundred.

JAMES B. GANTT,
Chief Justice and Judge of the Supreme Court of the State of Missouri.

f Service of this citation on the fourth day of October, 1900, is hereby acknowledged.

B. SCHNURMACHER,
City Counselor of City of St. Louis, Being Within-named Def't in Error.

[Endorsed:] No. —. United States Supreme Court. Martha J. Sweringen, pl'ff in error, *vs.* The City of St. Louis, def't in error. Citation. Filed Oct. 3, 1900. Jno. R. Green, clerk.

1 STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 29th day of March, 1897, there was filed in the office of the clerk of the supreme court of the State of Missouri a transcript wherein Martha J. Sweringen was respondent and The City of St. Louis was appellant; which said transcript is in words and figures as follows, to wit:

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that heretofore, to wit, on the sixteenth day of April, A. D. 1895, there was filed in the office of the clerk of the circuit court, city of St. Louis, within and for the city and State aforesaid, a petition in a certain cause wherein Martha J. Swearingen is plaintiff and The City of St. Louis and Justic E. Joy are defendants:

The said petition is in words and figures as follows, to wit:

STATE OF MISSOURI, } ss:
City of St. Louis, }

In the Circuit Court for the City of St. Louis, June Term, 1895.

MARTHA J. SWEARINGEN, Plaintiff, }
vs.
CITY OF ST. LOUIS and JUSTIN E. JOY, Defendants. }

Plaintiff states that the defendant, City of St. Louis, is and was at the times hereinafter mentioned a municipal corporation under the laws of this State, and that on the 9th day of April, 1891, she was entitled to the possession of the following-described premises, situate in said city, to wit: Beginning at a point in the southern line of Buchanan street at the northeast corner of city block No. 2544 of said city, thence southwardly along the eastern line of said block to the southeast corner thereof; thence westwardly along the southern line of said block 150 feet to the southeast corner of city
1½ block No. 660 E. of said city; thence south-ardly to the northeast corner of city block No. 661 E. of said city; thence southwardly along the eastern line of said last-named block to the southeast corner of the same, in the northern line of Branch street extended to the Mississippi river, to said river; thence northwardly along said river to the southern line of said Buchanan street extended to said river, and thence westwardly along the southern line of said Buchanan street extended to said river to the point of beginning; and, being so entitled to the possession thereof, that the defendants afterwards, to wit, on the day and year aforesaid, entered into such premises and unlawfully withhold from the plaintiff the possession thereof, to her damage in the sum of five thousand dollars. She further avers that the value of the monthly rents and profits of said premises is one hundred dollars.

Wherefore she demands judgment for the recovery of the premises and five thousand dollars damages for the unlawful withholding of the same from the plaintiff, and one hundred dollars for monthly rents and profits from the rendition of judgment until the possession of the premises is delivered to plaintiff, and for other proper relief.

THOS. A. RUSSELL AND
E. P. JOHNSON,
Attorney- for Plff.

Upon the filing of the said petition a writ of summons for the defendants was issued from the office of the clerk of the said court and delivered to the sheriff of the city of St. Louis, and was thereafter returned by the said sheriff duly executed as to both defendants.

And afterwards, at the June term, 1895, of said court, the following proceedings were had in said cause, to wit:

MONDAY, *June 3rd*, 1895.

MARTHA J. SWEARINGEN
vs.
CITY OF ST. LOUIS ET AL., E. JOY. } (99865.)

2 *Separate Answer of The City of St. Louis Filed and Separate Answer of Justin E. Joy Filed.*

Which answer of defendant Joy is in words and figures as follows, to wit:

MARTHA J. SWEARINGEN
vs.
CITY OF ST. LOUIS & JUSTIN E. JOY.

Comes now the defendant Justin E. Joy, and for his separate answer to the petition herein denies each and every allegation therein contained.

H. M. POLLARD,
Att'y for Def't Joy.

And afterwards, at the February term of said court, the following further proceeding was had in said cause, to wit:

THURSDAY, *March 12th*, 1896.

MARTHA J. SWEARINGEN
vs.
CITY OF ST. LOUIS ET AL. } (99865.)

Separate Answer of City of St. Louis Filed by Leave and by Consent.

Which answer is in words and figures as follows, to wit:

In the Circuit Court, City of St. Louis, State of Missouri, Room 6.

MARTHA J. SWEARINGEN, Plaintiff,
vs.
JUSTIN E. JOY and THE CITY OF ST. LOUIS. } No. 99865.

3 Now comes the defendant The City of St. Louis and, by leave of court first obtained, files this its separate answer to the petition of plaintiff, and for such answer denies each and every allegation in said petition contained.

And for a further answer to said petition this defendant avers that it has had open, notorious, continuous, and adverse possession of the

premises described in said petition under claim and color of title for more than ten years next before the filing of said petition; and for a further answer to said petition this defendant avers that the property described in plaintiff's petition has been in adverse use and occupancy of this defendant, The City of St. Louis, as a public wharf of said city for a period of more than ten years prior to the filing of said petition, and said land has been held by the city of St. Louis and has been used by the public as such public wharf during said period of time, and said plaintiff has acquiesced in said public use and is estopped to deny the same.

And for a further and separate answer and defense this defendant says that neither the plaintiff nor her ancestor, predecessor, grantor, or the person under whom she claims was seized or possessed of the premises described in the petition and in question in this case within ten years before the commencement of this action.

Wherefore this defendant, The City of St. Louis, prays to be hence dismissed with its costs.

W. C. MARSHALL,
CHAS. CLAFLIN ALLEN,
Att'ys for Def't City of St. L.

And afterwards, at the said February term, 1896, of said court, the following further proceeding was had in said cause, to wit:

MONDAY, *March 16th*, 1896.

MARTHA J. SWEARINGEN
vs. } 99865. Reply Filed.
CITY OF ST. LOUIS ET AL.

Which reply is in words and figures as follows, to wit:

4 In the Circuit Court for the City of St. Louis, February Term, 1896.

MARTHA J. SWEARINGEN, Pl'ff,
vs.
CITY OF ST. LOUIS ET AL., Def'ts.

Plaintiff, for reply to the new matter set up in the separate answer of the City of St. Louis herein, denies each and every allegation therein contained.

E. P. JOHNSON &
L. BELL, *Att'ys for Pl'ff.*

And afterwards, at the October term, 1896, of said court, the following further proceedings were had in said cause, to wit:

WEDNESDAY, *December 2nd*, 1896.

MARTHA J. SWEARINGEN
vs. } 99865.
CITY OF ST. LOUIS and JUSTIN E. JOY.

Now, at this day, this cause coming on to be heard and a jury being waived and the cause submitted to the court on the pleadings

and evidence and arguments of counsel for the respective parties, the court thereupon finds the issues in favor of the plaintiff and doth order, adjudge, and decree that the plaintiff recover of defendants the possession of the following-described premises, in the city of St. Louis, Missouri, bounded on the east by the Mississippi river, on the west by a line coincident with the alleged western boundary of the wharf as set forth in ordinance 5403, which line is 90 feet and 9¼ inches in length along northwardly with said alleged wharf line and commences at a point 60 feet and 6¼ inches north of the intersection of the north line of Dock street produced to the river and 60 feet and 6¼ inches north of the same, and on the north by a line parallel to the south line and 90 feet therefrom, and that said plaintiff also and further recover damages of the defendant
5 The City of St. Louis in the sum of five thousand dollars for the detention of said property during the five years preceding the date of this judgment, and the value of the monthly rents and profits of said property, which is found and established to be the sum of one hundred dollars, and that plaintiff recover her costs in the premises and have execution for the same and the above amounts and a writ of possession for the property.

THURSDAY, *December 3d*, 1896.

MARTHA J. SWEARINGEN
vs.
CITY OF ST. LOUIS and JUSTIN E. JOY. } 99865.

Defendant City of St. Louis' motion for new trial filed. Defendant Justin E. Joy's motion for new trial filed.

And afterwards, at the December term, 1896, of said court, the following further proceedings were had in said cause, to wit:

MONDAY, *December 15th*, 1896.

MARTHA J. SWEARINGEN
vs.
CITY OF ST. LOUIS ET AL. } 99865.

It is ordered by the court that the motion for a new trial heretofore filed herein be overruled.

TUESDAY, *December 29th*, 1896.

MARTHA J. SWEARINGEN
vs.
CITY OF ST. LOUIS ET AL. } 99865.

Now, at this day, comes defendant City of St. Louis and presents to the court its bill of exceptions, which is signed and sealed by the court, filed herein, and made a part of the record herein; said defendant thereupon files its affidavit for appeal and its appeal and its appeal bond, which is approved by the court, and, on its motion, an

appeal is allowed it from the judgment herein to the supreme court of the State of Missouri.

6 Which bill of exceptions is in words and figures as follows, to wit:

In the Circuit Court, City of St. Louis, February Term, 1896.

MARTHA J. SWEARINGEN
vs.
CITY OF ST. LOUIS ET AL. } No. 99865.

MARTHA J. SWEARINGEN
vs.
ST. LOUIS, KEOKUK & NORTHWESTERN RAILROAD CO. } No. 99866.

Appearances: Leverett Bell, Esq., and E. P. Johnson, Esq., for plaintiff, and John H. Drabelle, Esq., and E. S. Robert, Esq., for St. L., K. & N. W. R. R. Co.; Chas. Claflin Allen, Esq., for City of St. Louis, and H. M. Pollard, Esq., for Justin E. Joy.

Be it remembered that on this 17th day of March, 1896, the above-entitled causes coming on to be heard before his honor John M. Wood, presiding as judge in the circuit court of the city of St. Louis and State of Missouri, in court-room No. 6, without a jury, a jury having been waived by consent of all the parties in open court, the following proceedings were had:

The plaintiff, to sustain the issues on his part, introduced evidence as follows:

It was agreed by all the parties, the court consenting thereto, that both of the above-entitled causes should be tried together.

ROBERT E. COLLINS, being duly sworn on behalf of plaintiff, testified as follows:

Direct examination by E. P. JOHNSON, Esq.:

Q. What is your name?
A. Robert E. Collins.
Q. What is your business?
A. Attorney-at-law.
Q. You were acquainted with Mary L. Tyler?
A. I was during her lifetime.

7 Q. And the Buchanan family?
A. I didn't know the Buchanan family.

Q. You are engaged in handling Mrs. Tyler's property, are you not?
A. I was attorney for Mrs. Tyler in some respects.
Q. That is adjoining Buchanan's on the south?
A. I think it is on the north. Buchanan's is on the north of Mrs. Tyler. In city block #308 east, 660 west, 660 east, and 2544—in those blocks I represented Mr. Tyler.

Mr. ROBERT: We object to that as irrelevant and immaterial to the issues of this case.

COURT: Objection overruled.
To which ruling the defendants then and there duly excepted.
WITNESS: I represented Mrs. Tyler with respect to certain property in each of those city blocks—property she owned—and — respect to which I represented her.

Q. What else were there in this block?
A. In city block 308 east, being lots.

Mr. ALLEN: I object to that. It is a conclusion of the witness, stating what blocks Mrs. Tyler owned.
COURT: I do not think he can testify about the ownership of the property.

Q. What were you doing, with reference to this property, for Mrs. Tyler?

Mr. ALLEN: There again we object as irrelevant and immaterial, because the question does not relate to any property in controversy in this case.
COURT: Objection overruled.
Mr. ALLEN: We save an exception.

WITNESS: I was employed by Mrs. Tyler to cause the removal of a number of squatters that were upon this property.
Q. What were the number of the lots?

Mr. ALLEN: We object to that as immaterial, for the same reasons as before.
8 COURT: Objection overruled.
To which ruling defendants then and there duly excepted.

Ans. They were lots 30, 31, and 32, and a strip of 120 feet wide from the north to the south, running from the eastern boundaries of lots 30, 31, and 32, city block 308 east, to the bank of the Mississippi river. The land bound the south line of that strip by a line being a prolongation of the division line as between lots 32 and 33, being a prolongation of the division line between lots 32 and 33, in city block 308 east.

Mr. ROBERT: That is getting in what your honor indicated would be ruled out.

Q. What were the numbers of the lot- immediately north of that?
A. I do not know.
Q. Have you them on a plat?
A. No; I have not.
Q. What were the negotiations on the block north?
A. I had no negotiations with any one on the block north.
Q. I mean the lot north of the Tyler's, not the block.
A. Personally I had no negotiations with any one.
Q. I will ask you, Mr. Collins, what was the result of these negotiations that you have there in your hand.
A. This paper was handed to me by Silas Bent, who was the agent and representative of Mrs. Tyler in this city. Mrs. Tyler lived in

Louisville, Ky., and her son-in-law represented her in this city. Captain Bent handed me these papers.

Mr. BELL: Is that an agreement between the Tyler heirs and the Buchanan?

Mr. ROBERT: The paper will speak for *itself*. We prefer to have the paper speak for itself.

Mr. ALLEN: Do you undertake to be bound by that paper—be bound?

Mr. JOHNSON and Mr. BELL: Certainly, we will concede that.

Mr. ALLEN: You concede you are bound by that paper and plat?

Mr. JOHNSON: Yes; we will concede that.

9 Q. Let Mr. Collins read the paper.

Mr. Collins reads paper.

Mr. JOHNSON: We will offer the paper in evidence.

Which was read; which is as follows:

(Here follows map marked p. 9.)

10 Objected to as incompetent, irrelevant, and immaterial, because it is not between parties to this suit or any of them, or between any party to this suit and any other person, and because it does not relate to the property here sued for.

Objection overruled; to which ruling defendants duly excepted at the time.

The COURT: Designate it by name.

WITNESS: It is an abstract of title gotten up by J. G. McClellan, and endorsed on one of the places is an agreement.

Q. Called Exhibit "A"?

WITNESS: You may call it what you please. You may use it here, but I will not part with my right to immediate possession of it at any time.

Taken subject to the leave of the gentleman.

WITNESS: It is an important matter of the title in the Tyler estate. I cannot afford to let it go out of my possession. I will certainly leave it with the court for a week, if necessary.

Q. I ask you to state to what point did Mrs. Tyler continue to occupy as long as you knew anything about it, as described on that plat or claim.

Mr. ALLEN: We object to that.

COURT: Objection sustained.

Mr. BELL: He can state what was done on any part of the Tyler estate?

COURT: I want the facts; let him describe what was done.

Ans. I went on this property a number of times, and when I first went there I found a number of people living in various shanties, some of them little river boats, and I have time and time again removed them from the Tyler property.

Q. Not the Swearingen property?

Exhibit A

It is agreed between Silas Bent & Wm. M. McPheeters that there division line is to be at a point on the West line of Main St. Two hundred and seventy feet north of the north line of Dock Street and said line to run eastwardly parallel with the north line of said Dock Street to the Mississippi river. St Louis, April 3rd, 1873.

Mary L. Tyler by Silas Bent.

Sallie B. M. Fuller, Mary B. Scott & Julia Crosby by W. M. McPheeters.

No. 4710 - Surviving Administrator, et al. } p. 9

A. I will come to that presently. I do not think I had to
11 institute more than one or two suits against them. Uniformly they made no claim; said they had no claim to the title of the property.

Mr. ROBERT: We object to that. State the facts; he is stating what people told him on the property.

COURT: The objection to what people told Mr. Collins will be sustained.

Q. State at what point on that plat you operated for Mrs. Tyler in regard to that property.

Mr. ROBERT: Question objected to as being incompetent, irrelevant, and immaterial, as not relating to the parties or property involved in this suit.

COURT: Objection overruled.

To which ruling defendants excepted at the time.

A. Along the whole piece of property that I have heretofore described in my testimony.

Q. How long had you been attending to this matter in behalf of Mrs. Tyler?

A. I think it must have been over eight years, at least. The people that I would remove sometimes would move right back, and if they did not move back others would come in their place. Messrs. Farrar & Tate employed my firm to perform some service with respect to the piece of property lying immediately south of the Tyler property. I think their strip was 90 feet wide and bounded the Tyler property on the south line a year or two years ago.

Mr. ALLEN: We object to that as being immaterial and irrelevant.

Objection overruled; to which ruling defendants duly excepted at the time.

Q. During all this time you were exercising acts over this property in behalf of Mrs. Tyler her property was up to that north line of that plat—the piece described on that plat—which you spoke of?

A. Yes, sir.

Q. That, you say, was continued for you for ten or twelve years or eight or ten years?

A. From eight to twelve years.

12 Q. Was any interference attempted by any person on the north when you were exercising charge of this land?

Mr. ALLEN: We object to that question as irrelevant and incompetent, as not relating to the parties or property involved in this case.

COURT: Objection overruled.

To which defendants duly excepted at the time.

A. No; excepting the single instance of a man by the name of Liebke, whom I found in possession.

COURT: You are talking about the Tyler property?

A. Yes; I found a man — Liebke. He had some inclosures on part of this, and I filed a suit in ejectment in behalf of the Tyler es-

tate, which is the successor of Mrs. Tyler, against Liebke. He had a lot of logs piled there. I understand he runs a planing mill and had a lot of logs piled on this portion of the Tyler property.

Q. This property in suit that is marked Swearingen on the plat there, the 90 feet, what did you do with reference to that property, and when?

Mr. ALLEN: We object to the question as being immaterial.
COURT: Objection overruled.
To which ruling defendant excepted.

A. I think possibly two years ago. M-rs. Farrar & Tate, who claimed to be the agent of Mrs. Swearingen, wrote us to clear the squatters off this 90-foot strip. (Witness indicates strip marked Swearingen on plat of Exhibit "A.")
Mr. ALLEN: When was that?
A. About two years ago.

Mr. ALLEN: We object to that question for the reason that the defendants were not in possession of that property.
COURT: Objection overruled.
To which ruling defendants excepted.

Q. Indicate at what points on this 90-foot lot by the plat that you did these matters.

13 MRS. ALLEN: We object for same reason. Defendants were not in possession of the property.
COURT: Objection overruled.
To which ruling defendants objected at the time.

A. I do not think I found any squatters on this city block 308 at all, but I did on the edge of the other block lying to the east of block 308.

Mr. BELL:

Q. Did you find any on the property sued on in this case?

Mr. ALLEN: We object.

Ans. I do not know what property is sued for.
Q. East of block 2544 to the river.

Mr. ROBERT: We object to the question on the ground it is incompetent and irrelevant and on the ground it took place after the city was in possession.
COURT: Objection sustained.
COURT: In regard to this abstract left with the court?
Mr. JOHNSON: Only the plat with the endorsement that we care to use at all.
WITNESS: That is the part I did not want to lose. I will have a copy made.

Cross-examination.

By CHAS. CLAFLIN ALLEN, Esq.:

Q. You said something about Mr. Liebke; where was Mr. Liebke at that time—where was his fence and where were his logs, as near as you can tell?

A. On part of block 660 west. I do not recollect whether it went onto 660 east or not, but surely was on block 660 west.

Q. How far south?

A. I cannot tell that. It was a very irregular-shaped piece of ground.

Mr. ROBERT: Didn't it go to Dock street?

A. No, sir.

Mr. ALLEN: What is the best of your recollection that you
14 have about that, Mr. Collins—how far south?

A. My best recollection is it went to the division line between what is here designated as Mrs. Martha Swearingen's tract and Mary L. Tyler. It possibly may have run a very few feet on the Swearingen tract.

Q. When was that? When was it that this Liebke was in possession in the way you have described?

A. I do not know.

Q. When was the time when you first knew that Liebke made a claim?

A. It was possibly four years ago—three or four years ago.

Q. Don't you know how he claimed it?

A. Simply in this: My attention was drawn to it by change in the assessment.

Q. What you are testifying to here—this occurred the last few months?

A. Within the last four years.

Q. All you have testified to about Liebke is within the last four years?

A. Yes, sir.

Mr. DRABELLE: You brought suit in behalf of the Tyler estate to recover possession of that property from Liebke?

A. Yes, sir.

Mr. BELL: What was the result?

A. It is still pending.

Mr. JOHNSON: We will begin the record evidence.

First, the United States patent—the patent from the United States to Labeaume, by his legal representative, dated March 25th, 1852. I will say to your honor this patent is very old and has been used a great deal, and some of the lines are so light it is hard to read. Recorded in Book 188, page 1, of the recorder's office. I will read parts of it. It is not worth while to read it all.

Mr. ALLEN: We object to the patent as irrelevant and immaterial and not tending to support the issues in this case and not showing the plaintiff was a riparian owner.

COURT: Objection overruled.

15 To which ruling defendant excepted at the time.

Said patent was read as follows:

The United States of America to all to whom these presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office a patent certificate number one thousand two hundred and forty-nine of the recorder of land titles at St. Louis, Missouri, whereby it appears that on the fifteenth day of February, one thousand seven hundred and ninety-nine, Zenan Trudeau, lieutenant governor of the Spanish province of Upper Louisiana, made a concession of about three hundred and sixty arpen-s of land to Louis Labeaume, and that on the second day of March of the same year, it was surveyed by Antoine Soulard, surveyor of the same province to the amount of three hundred and seventy-four arpents, situated three miles north of the town of St. Louis, and that the board of commissioners appointed *appointed* in pursuance of the fifth section of the act of Congress approved the second day of March, one thousand eight hundred and five, entitled "An act for ascertaining and adjusting the titles and claims to land, within the Territory of Orleans and the district of Louisiana," confirmed on the twenty-second day of September, one thousand eight hundred and ten three hundred and fifty-six arpents to Louis Labeaume, agreeably to the aforesaid concession; and that on the fourteenth day of June, one thousand eight hundred and eleven, they issued their certificate numbered nine hundred and eighty-two for that confirmation under the fourth section of the act of Congress approved the third day of March, one thousand eight hundred and seven, entitled An act respecting claims to land in the Territories of Orleans and Louisiana.

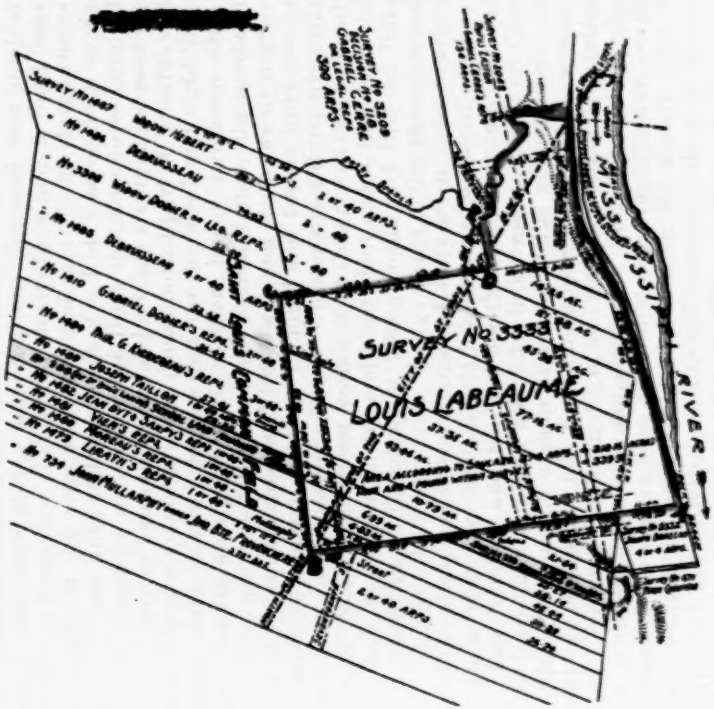
And whereas, it further appears from the aforesaid patent certificate that pursuant to the decision of the twenty-fifth day of July, one thousand eight hundred and fifty-one of the Secretary of
16 the Interior, those claiming under Labeaume are entitled to a patent for the land according to Soulard survey, and Labeaume's possession, and that the lines of the said Soulard's survey have been retraced in conformity with the decision referred to as appears from the plat and transcript of survey numbered three thousand three hundred and thirty-three, which accompan*ying* said patent certificate, the said plat and transcript survey having been authenticated by M. Lewis Clark, surveyor general of Illinois and Missouri under date twenty-sixt*y* of February, one thousand eight hundred and fifty-two; which said survey number three thousand three hundred and thirty-three contains three hundred and thirty-nine acres, and sixth-eight-hundredths of an acre, being situated in township forty-five, north of the base line, of range seven east of the fifth principal meridian, in the State of Missouri, and which is platted, and described as follows, to wit:

(Here follows map marked p. 16.)

SURVEY No 3333. T. 45 N. R. 7 E. 5TH PR MN

[redacted]

No 4570.
Surveying Co. 16
St Louis



said patent was read as follows:

The United States of America to all to whom these presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office a patent certificate number one thousand two hundred and [illegible] of the recorder of land office at St. Louis, Missouri, whereby it appears that on the twenty-ninth day of February, one thousand eight hundred and [illegible], Serain Trudeau, [illegible] governor of the Spanish [illegible] Upper Louisiana, under a commission of the date three hundred and [illegible] square of land to Louis Lutenegger, and that on the seventh day of March of the same year it was surveyed by Antoine [illegible] surveyor of the said province to the quantity of three hundred and seventy-two arpents, situated [illegible] south of the town of St. Louis and that the usual [illegible] of possession appears to [illegible] of the [illegible] of the said province [illegible] and the [illegible] and the [illegible] and the

17 Begin at a stake set on the right bank of the Mississippi river between high and low water mark and on the extension line produced eastwardly from Lebeaume's southern ditch, the lower and most eastern corner of this survey, and the upper and most northern corner of the survey of Joseph Brazeau numbered three thousand three hundred and thirty-two, from which the northeast corner of the ruins of a stone house built by the late Martin Thomas for a distillery, &c., bears south fifty-seven degrees, and fifty-five minutes west, distant one hundred and twenty-nine links,—thence south seventy-four degrees and thirty minutes west, with the southerly boundary of this survey, and with the line of Labeaume's southern ditch, at four chains and twenty-three links a stone at the southeast corner of an enclosure,—at eight chains and fifty-six links, a stone at the southwest corner of an enclosure, at nine chains and seventy-two links a stone at the southeast corner of another enclosure,—at eleven chains intersects the eastern boundary of the St. Louis common field, and the eastern boundary of the lot in the said common field, being survey numbered one thousand four hundred and ten at a stone two chains and thirty-three and a third links northwardly of the southwest corner of said lot, at eleven chains and seventy-six links and two thirds of a link a stone the westerly corner of Brazeau's survey number three thousand three hundred and thirty-two, at fourteen chains and seventy-six links intersect the eastern line of edge stones to the macadamized part of Broadway at a point north thirteen degrees west two hundred and eight links distant from another point in the northern line of Labeaume street, which latter point is forty-two links westward from the northeast corner of Labeaume street and Broadway and south twenty degrees and forty-five minutes east, four hundred and twenty links distant from a point in the northern line of Webster street thirty-five links westward from the northeast corner of Webster street and Broad-
18 way, at fourteen chains and ninety-four and a half links the centre line of Broadway at fifteen chains and thirteen links intersect the western line of edge stones to the macadamized part of Broadway—at fifteen chains and forty-seven links intersect the line between the common field lots, surveys numbered one thousand four hundred and ten, and one thousand four hundred and eighty-four—four hundred and fifty links westwardly from their common corner on the eastern boundary of the common field—at twenty-two chains and fifty links the supposed place of the western and of Labeaume's southern ditch, and southern end of his western ditch, at twenty-five chains and eighty-five links the western edge of a stone on the eastern edge of Tenth street, at twenty-seven —and twenty-two links the eastern edge of a stone on the western edge of Tenth street, at twenty-eight chains and forty-five links a set stone—at thirty chains fifty-nine and a half links a set stone—at thirty-two chains and sixty-eight links intersect the line between the common field lots surveys numbered one thousand four hundred and eighty-four and one thousand four hundred and eighty-three at a large stone, twenty-one chains and sixty-four links westwardly from the common corner to said lots on the eastern boundary line of the

common field, at thirty-eight chains, fifty-six links intersect the southern line of the common field lot survey number one thousand four hundred and eighty-three at the northwest corner of the school lot survey number three hundred and seventy-nine (of St. Louis lands) twenty-seven chains and fifty-six links westwardly from the common corner of said surveys the eastern boundary of the common fields, said intersection is in the garden of Major Edward Dobyns at a point from which the southwestern corner of the main part of said Dobyns' house bears south seventy degrees east distant one hundred and twenty-three links, at forty chains and ten links, leave Dobyns' garden at forty chains eighteen and a half links a small set stone at forth chains and forty-eight links a large stone at forty-one chains and forty-two links a large set stone at forty-two
19 chains and sixty-two links a small set stone, at forty-three chains and ten links a long pond extending northwardly and southwardly, and fifty links wide, at forty-four chains and twenty links intersect the northern line of the common field lot, survey number one thousand four hundred and eighty-two at a large stone, being the most western corner of the aforesaid school lot number three hundred and seventy-nine, and thirty-three chains and twenty-seven links westwardly from the common corner to said lots on the eastern boundary of the common field, at forty-six chains and thirty-five links a large set stone, at forty-seven chains twenty-four and a half links a large set stone, at forty-nine chains and ninety-six links intersect the line between the common field lots surveys numbered one thousand four hundred and eighty-two, and one thousand four hundred and eighty-one at a large stone, thirty-nine chains and fourteen links westwardly from the common corner to said surveys on the eastern boundary of the common field, at fifty-one chains and thirty-two links a large set stone, at fifty-two chains and eighteen links a set stone seven links to the left of the line at fifty-five chains and seventy-four links intersect the lines between the common field lots surveys numbered one thousand five hundred and eighty-one, and one thousand four hundred and eighty at a limestone forty-five chains and four links westwardly from the common corner to said surveys on the eastern boundary of the common field, and from said intersection a white oak eight inches in diameter, bears north forty degrees east, distant fifteen links, and a red oak, eight inches in diameter, bears north fifty-nine degrees and thirty minutes west, distant ten links at sixty chains, eighty-three and a third links intersect Tyler's western fence, ten links northward of the southwest corner of his enclosure, at sixty-one chains and forty-eight links intersect the line between the common field lots, surveys numbered one thousand four hundred and eighty-
20 & 21 and one thousand four hundred and seventy-nine at a limestone, fifty chains and eighty-nine links westwardly from the common corner to said surveys on the eastern boundary of the common field, from said intersection the centre of the northern opening of the culvert across Mullanphy street bears south thirteen degrees and thirty minutes east distant fifty-two links, at sixty-three chains, and eight links intersect the line of water pipes in Mullan-

phy street, at sixty-four chains and thirty-three links intersect the line of water pipes in Seventeenth street at sixty-four chains and seventy-two links intersect James Clemen's fence on the west side of Seventeenth street, south fifteen degrees west and thirty-nine links distant from the northern corner of his lot, at sixty-seven chains and two links intersect the line between the common field lots surveys numbered one thousand four hundred and seventy-nine, and seven hundred and thirty-four, at a point fifty-six chains and seventy-four links westwardly from the common corner to said surveys on the eastern boundary of the common field, sixty-seven chains eight links and one-third of a link equal to twenty-three arpens, to a limestone thirty inches long, twelve inches wide, and ten inches thick, the most southern corner of this survey, thence north fifteen degrees and thirty minutes west, with the westerly boundary of this survey, at three and a half links intersect the line between the common field lots, surveys numbered seven hundred and thirty-four, and one thousand four hundred and seventy-nine at a point sixty-two chains and forty-three links eastwardly from the common corner to said surveys on the western boundary of the common field, at one chain and seventeen links intersect the northwestern boundary line of the city of St. Louis, at one chain eighty-three and a half links intersect Clemen's fence on the south side of Mullanphy street two chains and ninety-five links north, seventy-five degrees west from the corner of this enclosure at the southwest corner of Mullanphy and Seventeenth street-, at three chains
22 and forty links intersect the line between the common field lots surveys numbered one thousand four hundred and seventy-nine, and one thousand four hundred and eighty at a limestone sixty-one chains and seventy-one links south, seventy-five degrees and fifteen minutes east from the common corner to said surveys on the western boundary of the common field at six chains and seventy-seven links intersect the line between the common field lots surveys numbered one thousand four hundred and eighty, and one thousand four hundred and eighty-one at a point in a pond one hundred and fifty links wide, and sixty chains ninety-seven links south seventy-five degrees and fifteen minutes east from the common corner to said surveys on the western boundary of the common field, at ten chains eighteen links intersect the line between the common field lots surveys numbered one thousand four hundred and eighty-one, and one thousand four hundred and eighty-two at a limestone sixty chains and seven links south, seventy-five degrees and fifteen minutes east from the common corner to said surveys on the western boundary of the common field, at thirteen chains and sixty-one links intersect the northern line of the common field lot survey number one thousand four hundred and eighty-two, and the southern line of a lot heretofore assigned to the public schools of the city of St. Louis as survey number three hundred and eighty at a limestone set at Hanfield's southern fence fifteen and three-quarter links eastward of his southwest corner and fifty-nine chains and one link south seventy-five degrees and fifteen minutes east from the common corner to said surveys on the western

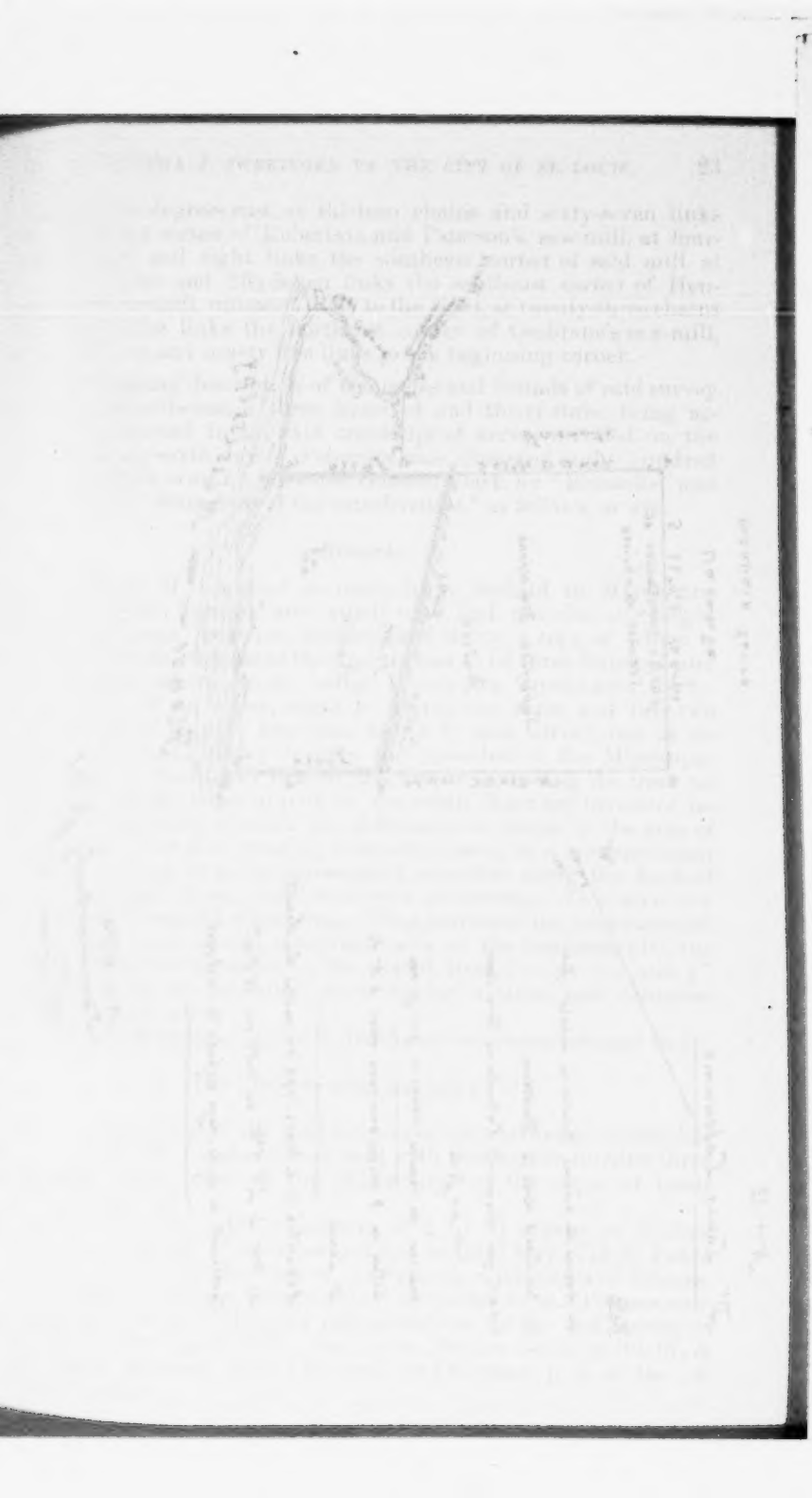
boundary of the common field at sixteen chains ninety-eight links intersect the northern line of said school lot, and the southern line of the common field lot survey number one thousand four hundred and eighty-three at a limestone fifty-eight chains and twenty-nine links south, seventy-five degrees and fifteen minutes east from the common corner to said surveys on the western boundary of the common field, at twenty chains and thirty-eight
23 links intersect the line between the common field lots surveys numbered one thousand four hundred and eighty-three, and one thousand four hundred and eighty-four at a limestone fifty-seven chains and forty-one links south seventy-five degrees and fifteen minutes east from the common corner to said surveys on the western boundary of the common field, and thirty-nine chains ninety-eight links north seventy-five degrees and fifteen minutes west from the intersection of said line with the southerly boundary of the survey at twenty-two chains and twelve links intersect the eastern jamb of the main front door to George Emerick's brick house twenty-six links westward of the southeast corner thereof, at thirty chains and forty-nine links intersect the line of the common field lots surveys numbered one thousand four hundred and eighty-four and one thousand four hundred and ten at a limestone, fifty-four chains and forty-four links south seventy-five degrees and fifteen minutes east from the common corner to said surveys on the western boundary of the common field, at thirty-seven chains and twenty-three links intersect the line between the common field lots surveys numbered one thousand four hundred and ten, and one thousand four hundred and eighty-five on the slope of a large sink-hole facing eastward and at a limestone fifty-two chains and sixty-eight links south seventy-five degrees and fifteen minutes east from the common corner to said survey on the western boundary of the common field, at forty-six chains sixty-six and two-third links, equal to sixteen arpens the place of the corner according to Soulard's call for his measurement of this line but this falls short of the northern boundary prolonged south seventy-four degrees and thirty minutes west in continuation of the old ditch which marks the position of said northern line therefor. Forty-seven chains and twenty-eight links to the intersection of the line of said prolongation of the old northern ditch, where set a limestone forty inches long, twelve inches wide and eight inches thick with the smallest end fourteen inches above the natural sur-
24 face of the ground for the most western corner of this survey, thence north seventy-four degrees and thirty minutes east, with the main northern boundary line of this survey, at one chain and ninety-seven links the most southern corner of survey number three thousand two hundred and nine in the name of Gabriel Cerré at an old large stone, at five chains and eighty-nine links intersect the line between the common field lots surveys numbered one thousand four hundred and eighty-five and three thousand three hundred and six and fifty-seven chains south seventy-five degrees and fifteen minutes east from the common corner to said survey on the western boundary of the common field, at six chains and twenty-three links the place of the former most western corner of this

survey made by Jas. C. Brown of this chain for Louis Labeaume and numbered two thousand nine hundred and seventy-four, at twenty-three chains and seventeen links intersect the line between the common field lots surveys numbered three thousand three hundred and six, and one thousand four hundred and eighty-six at an old stone seventy-four chains and three links south seventy-five degrees and fifteen minutes east from the common corner to said surveys on the western boundary of the common field, at twenty-seven chains and twelve links a stone at the intersection of the centre line of Wright street with "Twelfth street" (formerly Seventh street) and at an angle in the easterly side of the latter, at twenty-nine chains and four links, a stone, at twenty-nine chains and fifty links a stone, at thirty-one chains and sixty-nine links a stone on the west side of "Eleventh" (formerly Sixth) street, at thirty-two chains and ninety-one links a stone on the east side of said Eleventh street, at thirty-four chains and thirty-six links the east side of the old road, about the place of the western end of Labeaumme's northern end of his western ditch, at thirty-five chains thirty-four links intersect the line between the common field lots surveys numbered one thousand four hundred and eighty-six, and one thousand four hundred and eighty-
25 seven at a limestone, ninety chains south seventy-five degrees and fifteen minutes east from the common corner to said surveys on the western boundary of the common field, and from said intersection a sycamore, twenty-four inches in diameter bears south seventy-five degrees and fifteen minutes east, distant two and a half links, at thirty-five chains and seventy-two links intersect the northwestern boundary line of the city of St. Louis at a point six chains, and seventy-two links, north twenty-two degrees east from a stone on said city line and on the hill, thirty-seven chains and eighty-six links to the place of the old corner stone established by Anté Soulard; found by Jas. C. Brown in the year eighteen hundred and seventeen, and established by him in eighteen hundred and thirty-three, at this point set a limestone forty inches long, ten inches wide, and four inches thick, thirty inches into the ground, a corner of this survey, and of the aforesaid survey of Gabriel Cerré from which the main upright stem of a sycamore twenty-four inches in diameter bears north eighty-five degrees east distant forty links, thence north thirteen degrees and thirty minutes west, with a line between this survey and the claim of Cerré, at seventy-seven links a set stone two and two-thirds links to the left, at one chain and sixty-nine links a set stone six links to the left, at two chains and ninety-four links intersect the northwestern boundary line of the city of St. Louis at a stone ten chains and forty-four links north, twenty-two degrees east from another stone on said line and on the hill, at four chains and seventy-one links intersect the northern boundary line of the Saint Louis common field and of the common field lot survey number one thousand four hundred and eighty-seven at a stone ninety-four chains and thirteen links south seventy-five degrees, and fifteen minutes east from the northwestern corner of the common field, and of said lot, at five chains and

thirty-five links a set stone eighteen links to the left, at
26 six chains and eighty-eight links the west side of the north-
west prong of a double black oak fifteen inches in diameter, ten chains and fifty links equal to three arpens, six perches, to a corner of this survey in the old bed of the rocky branch, where, on account of the rocky bottom no course stone is set, from the point of this course the northwest corner of the southern abutment of the arch of the bridge across the rocky branch on the Bellefountaine road bears north nine degrees east, distant ten links—For further connection with this corner, which is marked E on the plat, run south twenty-two degrees west, three chains and six links to a point in the centre of the old road, at the foot of the hill, thence south one degree west, two chains ninety links the brow of the hill, and at eight chains and thirty links intersect the main northerly line of this survey with the centre line of said old road, at a point one chain and thirty-one links south seventy-four degrees and thirty minutes west of the intersection of said northerly line of this survey with the line between surveys numbered one thousand four hundred and eighty-six, and one thousand four hundred and eighty-seven—Return to corner E, and from thence meander down the Rocky branch, as near as practicable with the centre of the old bed thereof, north seventy-two degrees and thirty minutes east, at four links intersect the western side of the bridge, nine links south fourteen degrees thirty minutes east from the southern abutment of the arch thereof, at forty-four links intersect the eastern side of the bridge five links south fourteen degrees thirty minutes east from the southern abutment of the arch at one chain and fifty-three links a stone set in the old bed and in the right bank of the present bed of the branch thence north forty-two degrees and thirty minutes east at one chain and five links a limestone marked Z on the top set in the former bed of the creek on a hillock, seemingly made for turning the water from a stone wall, which is ten and a half links to the eastward from this stone, an elm thirty inches in diameter at the foot of the aforesaid stone wall bears north two de-
27 grees east distant sixty-nine links, and on this same course the southern edge of a wall is distant eleven links, another elm ten inches in diameter, bears north forty degrees west, distant thirty-seven and a half links thence north three degrees and thirty minutes east, at one chain and thirty-two links a point in the west side of a curve in said stone wall, from which the centre of the north end of the straight part of the wall bears south, two degrees east distant sixty links, and on the same course one hundred and thirteen links further the south end of said wall, thence north twenty-four degrees, and thirty minutes west, at eighty links a point in the water of the branch four links to the westward from the northern end of said stone wall, thence north fifty-five degrees west, with the branch, at one chain and sixty links a point in the left edge of the water of the creek,—thence north forty-seven degrees, and fifteen minutes west, one chain and fifty-nine links a point in the middle of the old bed of the creek two chains north seventy degrees east from the Bellefontaine road, thence north three degrees fifteen minutes west

at one chain a point on the left bank of the branch, thence north fifty-one degrees and forty-five minutes east—at seventy-three links a point in the branch thence south seventy-two degrees thirty minutes east at three chains and thirty-nine links a point thence north seventeen degrees and thirty minutes east, at fifty-nine links a post on the western side of a house appendant to Ashbrook's pork house, thence north at one chain a point in the old bed of the branch, thence north sixty-four degrees west at two chains and thirty-two links a point in the old bed of the branch, thence north one degree west, at one chain and twenty-six links the northwest corner of a brick house in the centre of the old bed of the branch, it being two chains and fifty-six links south, sixty-nine degrees west from the southwest corner of Dock street and Broadway,—thence north thirty-three degrees and forty-five minutes west, at seventy-seven links intersect the north side of Dock street two
28 chains and seventy-three links south sixty-nine degrees west from the northwest corner of Dock street, and Broadway at ninety-one links a point in the old bed of the branch, thence north twenty-five degrees and thirty minutes east, at one chain a point in a line of Jos. C. Brown's former meanders of the survey of this claim, thence south eighty-two degrees forty-five minutes east at one chain and ten links a point thirty and one-third links northward of Dock street, thence north five degrees and forty-five minutes west, at two chains and two links a point in the old and present bed of the branch, thence south seventy-eight degrees thirty minutes east, at sixty-three links a point in the west side of Broadway, one chain and ninety-one links north, twenty-one degrees west from the northwest corner of Broadway, and Dock street,—thence southwardly nine degrees and thirty minutes east, at one chain and forty-four links a point in the east side of Broadway, one chain and fifteen links north twenty-one degrees west from the northeast corner of Broadway and Dock street,—thence north eighty-six degrees thirty minutes east, at ninety-five links a point eighty-six and one-third links north, twenty-one degrees west from the north side of Dock street,—thence north twenty-four degrees east at sixty-three links a point one chain thirty-one and three-quarter links north, twenty-one degrees west from the north side of Dock street, thence north five degrees west at fifty-two links a point two chains eight links south, sixty-nine degrees west from the west side of Second or Main street,—thence north three degrees east, at one chain and ninety-nine links a point, one chain and twenty-seven links south, sixty-nine degrees west from the west side of Second or Main street, and two chains forty-five links, north sixty-nine degrees east from the east side of Broadway, thence north, nine degrees and forty-five minutes east; at sixty-six links a point ninety-three and a quarter links south sixty-nine degrees west, from the west side of Second or Main street—thence north seventy degrees fifteen minutes west, at one chain and eighteen links a point in the division
29 line between Overman and Overfield,—thence south sixty-nine degrees west, with the line between Overman and Overfield, at one chain and seventy-nine links a point on the east side

of Broadway, thence north fifty-five degrees and fifteen minutes west at one chain and twenty-four links a point in Broadway, thence north twenty-seven degrees and fifteen minutes east, at one chain a point in the east side of Broadway fifty-nine links south twenty-one degrees east from the southeast corner of Broadway and Buchanan street—thence north fifty-one degrees, and thirty minutes east, at one chain and ten links a point in the old bed of the branch,—thence south sixty-four degrees and thirty minutes east, at one chain and seventy links a point in the old bed of the branch, thence north sixty-four degrees and thirty minutes east, at forty-two links a point in the old bed of the branch thence north twenty-seven degrees and thirty minutes west, at one chain and seventy links a point in the old bed of the branch,—thence north forty-one degrees, and thirty minutes east, at one chain and forty-five links a point in the old bed of the branch, on the west side of Second or Main street, eight chains and thirty-two links, north twenty-one degrees west from the northwest corner of said street and Dock street, thence south forty-eight degrees and thirty minutes east, at two chains and sixty-two links intersect the eastern edge of Second or Main street, at three chains and seven links a point in the old bed of the branch,—thence north eighty-seven degrees, and thirty minutes east, at five chains and forty-six links a point at the mouth of the Rocky branch, the northeastern corner of this survey, and a corner to the city of St. Louis, it being the northern termination of the northwestern boundary line thereof. From this corner which is marked F on the plat, the northwest corner of Second or Main street and Dock street bears south thirty-seven degrees fifteen minutes west, distant seven chains and seventy-one links, and the point of intersection of the aforesaid city line with the southern edge of Dock street, bears south twenty-two degrees west, distant six chains and sixty-one links, which point of intersection is two chains and eight links north, sixty-nine degrees east from the southwest corner of Dock street, and Second or Main street,—From the corner of F down the right bank of the Mississippi river, with the meanders thereof, between high and low water mark, south nine degrees east, at eight chains and sixty-six links a stake, thence south twenty degrees east,—at five chains and fifty links a point, from which offset north, seventy degrees east, one chain and eighty-three links to the centre of the water of the Rocky branch, as running through the said beach, six chains and sixty-three links to the bluff of the sand beach seven chains and forty-seven links to the water's edge of the Mississippi river,—return to the meandering line, at ten chains a post from which the southeast corner of a stable bears south, forty-two degrees west, distant forty-six links, and the upper point of the entrance of the water of the Rocky branch into the Mississippi river, bears south sixty-two degrees and thirty minutes east, distant sixteen chains,—thence south thirty-four degrees east, at seven chains five links the eastern extension of Labeaumme's northern ditch from which the corner marked D on the plat bears north seventy-four degrees and thirty minutes east distant nineteen chains, and seventy-five links, at twenty-five chains a stake,—thence south

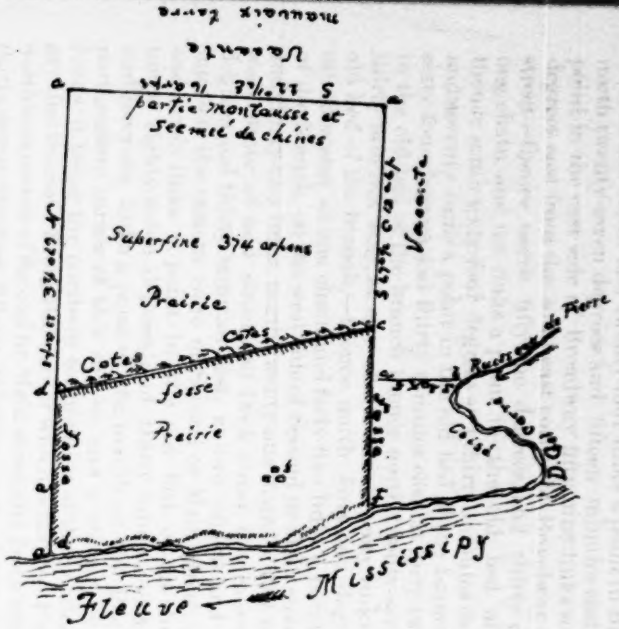


D.r Louis Labeaume

Note

a Coures de pierres, Temoins de marche par
b. Un Lièvre dans le Ruisseau
c.d.e.f qui designent Cetandu de Terre close
par un Jeré
maison de maitre cabanne, grange &c
Situe a 3 milles environs dans b.A. de
St Louis.

Arpenté le 2 Mars 1799 en vertu du droit
de Mr le Lt gour en date du 15 Fevr.
Certificat de arpentage expedié le 10 Avril



NO. 4470.
Survey'd
St. Louis
p. 31

wenty-three degrees east, at thirteen chains and sixty-seven links the northeast corner of Robertson and Paterson's saw-mill, at fourteen chains and eight links the southeast corner of said mill at twenty chains and fifty-seven links the southeast corner of Hendricks' flower-mill, nineteen links to the right, at twenty-three chains and thirty-five links the northeast corner of Cochrane's saw-mill, thirty chains and ninety-five links to the beginning corner.

The foregoing description of the metes and bounds of said survey number three thousand three hundred and thirty-three, being accompanied in the said transcript of survey certified on the
31 twenty-sixth day of February, one thousand eight hundred and fifty-two, by Surveyor General Clark, by "Remarks" and "Plat" and "Statement of the interferences," as follows, to wit:

Remarks.

The survey of this tract as made by A. Soulard in March one thousand seven hundred and ninety-nine, and recorded in "Registered d'apentage" page one hundred and thirty, a copy of which is attached hereto, represents the area thereof to be three hundred and seventy-four arpens, there being twenty-five arpens and thirty-hundredths of an arpen, equal to twenty-one acres, and fifty-two hundredths of an acre less than found by this survey, but as no notes of Soulard's survey describe the meanders of the Mississippi river, and of the Rocky branch, the former bounding the tract on the east, and the latter in part on the north, there are therefore no means to ascertain whether the difference, or excess, in the area of this survey over that given by Soulard is owing to a miscalculation by said Soulard, or to the subsequent accretion along the bank of the Mississippi river, since Soulard's operations,—This accretion appears to be rapidly advancing,—That portion of the tract eastward of the high bank, shown topographically on the foregoing plat, the top of which is designated by the dotted lines, "*a–b–c–d–e* and *f*" appears to be the accretion since Soulard's times, and containes about fourteen acres.

(The following is a copy of Soulard's survey above referred to:)

(Here follows map marked p. 31.)

32 Statement of the interferences of the surveys of certain lots in the St. Louis common field with this survey number three thousand three hundred and thirty-three in the name of Louis Lebeaumme, viz:

1st. Survey No. 1487, concession of 2 by 40 arpens to Widow Hebert and survey of the same certified on 23rd May 1772 by Pedro Piernas, lieutenant governor of the Spanish settlements of Illinois, and Martin Duralde, a surveyor duly appointed by said Piernas, confirmation to Widow Hebert's representatives by the 2nd section of the act of 29th April, 1816. See Livre Terrien No. 2, ps. 40, 67, & 68; Bates' Minutes, page 128, and his Decisions, p. 4, in the recorder's office.

2nd. Survey No. 1486. Concession of 2 x 40 arpens to Debuisseau, and certificate as above, confirmation as above to Debuisseau's representatives. Livre Ter. No. 2, ps. 39, 67, & 68; Bates' Minutes, p. 127, & his Decisions, p. 4.

3rd. Survey No. 3306. Concession of 3 by 40 arpens to Widow Dodier—survey and certificate as above—confirmation to Widow Dodier, or to her legal representatives by the 1st section of the act of the 4th July 1836 as per decision No. 300 of the last board of commissioners. See Liv. Ter. No. 2, ps. 38, 67, & 68; Minutes of the Late Board Book 6, p. 174, & Book No. 7, p. 185.

4th. Survey No. 1485. Concession of 4 by 40 arpens to Debuisseau—survey and certificate as above, confirmation to Debuisseau's representatives by the 2nd section of the act of 29th April 1816. Livre Ter. No. 2, ps. 37, 67, & 68; Bates' Minutes, p. 127; his Decisions, p. 4.

5th. Survey No. 1410. Jacques Clamorgau, assignee of Ortez under Gabriel Dodier—concession of 2 by 40 arepts to Gabriel Dodier survey and certificate as above, sale by the widow of Gab'l Dodier to John B. Ortez, the 10th January, 1810, sale by Ortez and wife to Jacq's Clamorgau the 14th April of the same year—confirmation to Gabriel Dodier's representatives by the 2nd sec-
33 tion of the act of the 29th April, 1816—also confirmation to Gabriel Dodier's legal representatives by the act of the 12th June 1812 as per proof before Recorder Hunt on the 15th August 1825 pursuant to the 1st section of the act of the 26th May, 1824. See Livre Terrien No. 2, p. 35, 67, & 68; Book F, ps. 90 & 91; Bates' Minutes, p. 74 & 127, & his Decisions, p. 1; also Haut's Minutes, Book No. 2, p. 147.

6th. Survey No. 1484. Concession of 3 by 40 arpens to Paul Gregaire Kircereau survey and certificate as above—confirmation to Paul G. Kiercereau's representatives by the 2nd section of the act of 29th April, 1816. See Livre Terrien No. 2, p. 34, 67, & 68; Bates' Minutes, p. 127; his Decision, p. 3.

7th. Survey No. 1486. Concession to Joseph Taillou of 1 by 40 arpens—survey and certificate as above confirmation to Joseph Tailou's representatives by the 2nd section of the act of the 29th April, 1816. See Livre Terrien No. 2, p. 33, 67, & 68; Bates' Minutes, p. 127; his Decisions, p. 3.

8th. Survey No. 380 (of the St. Louis lands) a piece of vacant land of 19.88 acres, designated and set apart to the public schools of the city of St. Louis by the surveyor general on the 31st March, 1845, pursuant to the act of Congress of 13th June, 1812, 26th May, 1824, and 27th January, 1831, and the instructions of the Commissioner of the General Land Office of the 15th January and 18th February, 1839.

9th. Survey No. 1482 (general series) concession of 1 by 40 arpents to Jean Baptiste Sarpy, survey of the same certified as above by Duraldé & Piernas confirmation to Jean B. Sarpy's representatives by the 2nd section of the act of 29th April, 1816, also confirmation by the act of 13th June, 1812, as per proof before Recorder Hunt on the 22nd June, 1825, to John Baptiste Sarpy's legal repre-

sentatives. See Livre Terrien No. 2, p. 32, 67, & 68; Bates' Minutes, p. 127, & his Decisions, p. 3; Hunt's Minutes, Book No.
34 2, p. 40, and his list No. 506.

10th. Survey No. 1481 concession of 1 by 40 arpents to Vien- survey and certificate as above,—confirmation — Vien's representatives by the 2nd section of the act of 29th April 1816. See Livre Ter. No. 2, ps. 31, 67, & 68; Bates' Minutes, p. 127, and his Decisions, p. 3.

11th. Survey No. 1480—concession of 1 by 40 arpents to Moreau survey and certificate as above—confirmed to Moreau's representatives, by the 2nd section of the act of 29th April, 1816. See Livre Terrien No. 2, p. 30; Bates' Minutes, p. 127, & his Decisions, p. 3.

12th. Survey No. 1479. Concession of 1 by 40 arpents to Lirette, survey and certificate as above, confirmation to Lirette's representatives by the 2nd section of the act of 29th April, 1816. See Livre Terrien No. 2, p. 29; Bates' Minutes, p. 127, and his Decisions, p. 3.

13th. Survey No. 734. Notice of claim by John Mullanphy to 80 arpens of land "as an improvement right under the assignment of Baptiste Provenchere"—deed from John Baptiste Provenchere to John Mullanphy dated 26th August, 1805—confirmation to John Mullanphy assignee of John Baptiste Provenchere on the 1st June, 1811, by the old board as per certificate No. 734 under the 2nd section of the act of 3rd March, 1807, and survey ordered according to possession. See Book A, ps. 12 & 57; Minutes of the Old Board, Book No. 4, p. 197; No. 5, p. 165, and certificate No. 734.

Now know ye, that there is therefore granted by the United States unto the said Louis Labeaume or his legal representatives, and to his or their heirs, the tract of land as described in the aforesaid survey number three thousand three hundred and thirty-three, saving and reserving any valid adverse rights, which may exist to any part thereof:

To have and to hold the said tract of land according to the
35 said survey number three thousand three hundred and thirty-three unto the said Louis Labeaume, or his legal representatives, and to his or their heirs and assigns forever, with the saving and reservation as aforesaid.

In testimony whereof, I, Millard Fillmore, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and fifty-two and the Independence of the United States the seventy-sixth.

By the President:

[SEAL.] MILLARD FILLMORE,
By ALEX. McCORMICK, *Sec'y.*

JOS. S. WILSON,
Acting Recorder of the General Land Office ad Interim.

Recorded, vol. 11, pages 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, & 171.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office April 14, 1857, and is truly recorded in Book No. 188, page 1, and following.

Witness my hand and official seal the date aforesaid.

[SEAL.] C. KEEMLE, *Recorder.*

Mr. ROBERT: Just consider it as read.

Mr. ALLEN: Understand me as excepting every time an objection is ruled against me.

COURT: Yes.

Mr. DRABELLE: I want to call attention to the metes and bounds of the survey. The question will arise as to the effect of those metes and bounds.

36 COURT: Mark it with pencil—mark on the margin where it commences to describe the land in this particular vicinity.

Mr. JOHNSON: I will next offer in evidence deed from Louis Labeaume to William Chambers, the land embraced in this petition, dated the 27th day of April, 1816, Book F, page 9, recorded in recorder's office.

Mr. ALLEN: We enter the objection that it is irrelevant, incompetent, and immaterial, not describing the land in controversy—not tending to show the land in controversy at any time—and no issue in this case.

COURT: Objection overruled.

To which ruling defendants duly excepted.

Said deed was read, and is as follows:

This indenture made the twenty-seventh day of the month of April in the year one thousand eight hundred and sixteen between Louis La Beaume and Sozan Chauvet Dubruil his wife of Richwood township, county of Washington, Missouri Territory, and William Chamber- of Jefferson county, State of Kentucky;

Witnesseth: That the said Louis Labeaume and Suzon Chauvet Dubruil his wife for and in consideration of the sum of seven thousand and four hundred and sixty dollars current money of the United States of America to them in hand paid the receipt whereof they do hereby acknowledge have granted bargained and sold, aliened, released, enfeoff- and confirmed and by these presents do grant, bargain and sell, alien, release, enfeoff and confirm unto said William Chambers his heirs and assigns a certain tract or parcel of land situate being and lying in the county of St. Louis, Territory aforesaid, and on the waters of the Mississippi containing three hundred and seventy-four arpents French measure, and bounded as follows, to wit, beginning at a bound marked D, on the original plat of survey made by virtue of the original Spanish concession north sixty-seven degrees thirty minutes east to a bound E, on the Missis-

37 sippi, thence with the meanders thereof to the mouth of Stony creek, thence up with the meanders of said creek to a bound

A, thence from A, south, twenty degrees thirty minntes east thirty-six poles to B, thence from B, south sixty-seven degrees thirty minutes west one hundred and thirty-six poles to a bound C, thence from C south twenty-two degrees thirty minutes east one hundred and sixty poles to the place of beginning, the whole according to the plot of the original survey made by Ant. Soulard the tenth of the month of April, in the year one thousand seven hundred and ninety-nine, reference thereto being had it will more fully appear, and all the estate, right, title, interest claim and fee of them the said Louis La Beaume and Suzon Chauvet Dubruil his wife of in and unto the said tract of land with all the appurtenances unto the said William Chambers his heirs and assigns to his and their only proper use benefit and behoof forever, and the said Louis La Beaume, and Suzon Chauvet Dubruil his wife do covenant and agree to and with the said William Chambers his heirs and assigns that they are seized and possessed of a good, sure and perfect estate in fee-simple of in and unto said tract of land with all the appurtenances and that they have full power, and lawful authority to sell and convey the same to the said William Chambers his heirs and assigns, and the said Louis La Beaume and Suzon Chauvet his wife do further covenant and agree to and with the said William Chambers his heirs and assigns that the said tract or parcel of land is free and clear of and from all right and title of dower or incumbrances whatever and that they will — their heirs executors administrators shall warrant and forever defend the said tract or parcel of land, with all the appurtenances unto the said William Chambers his heirs and assigns forever against the lawful claim or claims of all and every person or persons whatever lawfully claiming or to claim the same. In testimony whereof the said Louis La Beaume and Suzon Chauvet
38 Dubruil his wife have hereunto set their hands and seals on the day and year first written.

LOUIS LE BEAUME. [SEAL.]
SUZON LA BEAUME. [SEAL.]

Signed, sealed, and delivered in presence of—
AUGUSTE LE NOIR.
ALBERT TISOU.
IN. E. THOLOZEAU.

RICHWOOD TOWNSHIP, }
County of Washington Territory of Missouri. }

Before me, one of the justice of the peace for and in the township aforesaid, personally appeared Louis La Beaume and Suzon Chauvet Du Bruil, his wife, of the said township, and acknowledged to have signed, sealed, and delivered the within instrument of writing as their act and deed for the purposes therein contained, and having examined said Suzon Chauvet Dubruil apart and out of the presence of Louis Le Beaume, her husband, she has declared and said she has signed and sealed the above of her own free will and consent, without any force or compulsion whatever.

In witness whereof I have hereto set my hand and seal the twenty-seventh day of the month of April, one thousand eight hundred and sixteen.

JOHN HORRRINE, *J. P.* [SEAL.]

April 27th, 1816.—Received of William Chambers, in part payment of the land conveyed by the foregoing deed, the sum of two thousand four hundred and eighty-six dollars and 67 cents, it being one-third of the purchase-money, and for the remaining two-third of said purchase-money I have a mortgage on the land.

LS. LA BEAUME.

Recorded this third day of July, 1816.

M. P. LEDUE, *Clk.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

39 The undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Louis La Beaume and wife to William Chambers, together with the acknowledgment and date of recording thereof, as the same remains of record in my office, in Book F, p. 9.

In witness whereof I have hereunto set my hand and official seal this 12th day of March, A. D. 1896.

M. D. LEWIS, *Recorder.*

Mr. JOHNSON: We next offer in evidence deed from William Chambers to William Christy and Thomas Wright, being the same tract of land described in the Labeaume deed and patent. The deed is dated the 4th of May, 1816.

Mr. ROBERT: We object on the ground the signatures are not proven.

Mr. ALLEN: We object for the same reasons before made to deed from La Beaume to Chambers.

COURT: Objection will be overruled.

To which ruling defendants excepted.

Said deed was read and is as follows:

This indenture made this fourth day of May one thousand eight hundred and sixteen by and between William Chambers of Jefferson county in Kentucky of the one part and William Christy & Thomas Wright of the town of St. Louis in the Missouri Territory of the other part, witnesseth:

That the said William Chambers for and in consideration of the sum of four thousand nine hundred and seventy-three dollars and thirty-three cents to him in hand paid the receipt whereof he doth hereby acknowledge have granted bargained and sold and by these presents do grant, bargain and sell unto them the said William Christy and Thomas Wright their heirs and assigns, two equal undivided third parts of a certain tract or parcel of land containing three hundred and seventy-four arpens French measurement which land
40 is situated, lying and being in the county of St. Louis in the Missouri Territory, and bounded as follows, to wit: Begin-

ning at the letter marked D on the original plat of survey made by virtue of the original Spanish concession turning from thence north sixty-seven degrees thirty minutes east to the letter E, on the bank of the Mississippi thence with the meanders thereof to the north of Stony creek. Thence up with the meanders thereof to the letter A, on the said plats, thence south twenty degrees thirty minutes east thirty-six poles west one hundred and thirty-six poles to the letter C. Thence south twenty-two degrees thirty minutes east one hundred and sixty poles to the place of beginning. Containing according to the aforesaid original plat of survey made by Antn. Soulard the tenth day of April in the year one thousand seven hundred and ninety-nine reference thereunto being had, it will more fully appear. It being the same tract or parcel of land purchased by the said William Chambers of Mr. Louis La Beaume and Suzon Chauvet Dabruiel his wife for and on the joint & equal account of the said Christy Wright and himself on the twenty-seventh day of April eighteen hundred & sixteen—to have and to hold the said tract or parcel of land with all the appurtenances unto the said Wm. G. Christy and Thomas Wright their heirs and assigns to them and their only proper use and behoof forever and the said William Chambers doth covenany and agree to and with the said Christy & Wright their heirs and assigns that he the said Wm. Chambers will warrant and defend the said tract of land unto the said Christy and Wright their heirs and assigns against all and every person or persons lawfully claiming or to claim the same by, through or under him the said Chambers, but not against the claim or claims of any other person or persons whatsoever, and the said Wm. Chambers hereby further covenants and agrees to and with *this* Wm. Christy & Thomas Wright that they shall have full power and authority in common with himself to proceed against the said Louis Lebeaume & his legal representatives at law or
41 in equity under the covenant of general warrant*ee* contained in a deed of conveyance from the said Lebaume and his wife to the said Chambers for this same tract of land. Which deed was executed on the twenty-seventh day of April, one thousand and eight hundred and sixteen. For any damage they may sustain by the loss of any part of the land and they are hereby fully vested with the said authority.

In testimony whereof the said William Chambers hath hereto set his hand & seal the day and year first written.

WM. CHAMBERS. [SEAL.]

Written teste:
M. BLOOMFIELDWALL.
J. READ.

TOWNSHIP OF SAINT LOUIS, } ss:
County of St. Louis, Territory of Missouri, }

On the fifth day of May, eighteen hundred and sixteen, personally appeared before me, the subscriber, a justice of the peace for said

Saint Louis township, William Chambers and acknowledged the foregoing instrument of writing to be his act and deed and the premises therein mentioned to be the right and estate of the within-named William Christy and Thomas Wright, their heirs and assigns.

Given under my hand and seal the day and year aforesaid.

JHER CONNOR, [SEAL.]
J. P., St. Louis Township.

3rd July, 1816, 2nd.

Wm. Chambers to Wm. Christy & Thos. Wright. Deed.
Taxes, 0.50; record, 1.2; certificate, 20—$1.90.

STATE OF MISSOURI:

Be it remembered that this first day of September, eighteen hundred and thirty, personally appeared before me, a judge of
42 the supreme court in and for the State of Missouri, the within-named William Chambers, who is personally known to me to be the person whose name is subscribed to the within deed as having executed the same, and who declares that the same was heretofore executed and delivered on the fourth day of May, eighteen hundred and sixteen, as the same appears on the face of said deed, but, in order to comply with the existing laws on the subject, the said Chambers now acknowledges the same to be his act and deed for the purposes therein expressed.

Taken and certified the day and date first above written.

R. WASH,
Judge of the Supreme Court.

Recorded, Book F, page 10, and following, this third day of July, 1816.

M. P. LEDUC, *Co. Clk.*

Mr. ROBERT: It is not acknowledged under seal.

Objection overruled; to which ruling defendants duly excepted.

Mr. ALLEN: Mr. Reporter, note the exceptions when there is an adverse ruling.

I next offer in evidence deed from William Chambers & Thomas Wright to William Christy, partition deed, by which they conveyed and released their interests in certain parts embraced in this patent, including a great number of other lots out of lots # 1 and lot # 9, being the one in which the property in partition to which the accretion was made. Recorded in Book —, page 30.

Mr. ALLEN: We make the same objection.

COURT: Same ruling.

To which ruling defendants duly excepted at the time.

This deed made this first day of March eighteen hundred and thirty by and between William Chambers in his own proper person and Thomas Wright and Mary Ann his wife of the first part, and William Christy of the second part,

Witnesseth: That the said parties aforesaid being tenants in common in a certain tract of land now known by the name of
43 North St. Louis it being the same which the said William Chambers — of Louis Labeaume, as will more fully appear, by the deed bearing date the twenty-seventh day of April, eighteen hundred and sixteen and recorded in recorder's office of St. Louis county in Record Book F page nine an undivided interest of two-thirds of which was formerly conveyed by the said William Chambers to William Christy and Thomas Wright. For the division of the above-mentioned land, three several attempts have been made by commissioners and by consent, all of which division and conveyances by the mutual consent of all parties are hereby set aside and rendered null and void, to all interest and purposes. The parties aforesaid, having agreed on and affected a division of the land above described the parties of the first part hereby proceed to make this deed of relinquishment to the aforesaid William Christy, for those parts and parcels of the said tract as are hereinafter more particularly described.

Now therefore, the said parties of the first part for and in consideration of the quitclaim conveyance made by the said Christy to the said Chambers and Wright, and the sum of one dollar to them in hand, the receipt whereof is hereby acknowledged have sold and remised, released and forever quitclaime- and by these presents, do sell, remise, release and forever quitclaim unto the said William Christy his heirs and assigns forever, all their undivided right, title and interest, claim and demand of in and to the following-described parts and parcels of the aforesaid tract of land, to wit: All the lots known and described on a plan of the said town of North St. Louis with the enlargements thereto(now acknowledged by all the parties aforesaid and filed in the office of the recorder of deeds for the county of St. Louis in the State of Missouri in compliance with the statute in that case made and provided) by the following numbers, viz: (18) eighteen, (40) forty, (55) fifty-five (56) fifty-six fifty-seven (57) (69) sixty-nine, (74) seventy-four (77) seventy-
seven (79) seventy-nine, (80) eighty, (84) eighty-four (94)
44 ninety-four (96) ninety-six, (106) one hundred and six (107) one hundred and seven (108) one hundred and eight (109) one hundred and nine (110) one hundred and ten (111) one hundred and eleven (133) one hundred and thirty-three (135) one hundred and thirty-five (136) one hundred and thirty-six (137) one hundred and thirty-seven (139) one hundred and thirty-nine (140) one hundred and forty (141) one hundred and forty-one (142) one hundred and forty-two (143) one hundred and forty-three (144) one hundred and forty-four (145) one hundred and forty-five (146) one hundred and forty-six (147) one hundred and forty-seven (188) one hundred and eighty-eight (189) one hundred and eighty-nine (190) one hundred and ninety (191) one hundred and ninety-one (192) one hundred and ninety-two (193) one hundred and ninety-three (194) one hundred and ninety-four (195) one hundred and ninety-five (196) one hundred and ninety-six (197) one hundred and ninety-seven (198) one hundred and ninety-eight (199) one hundred and ninety-

nine (200) two hundred (201) two hundred and one (205) two hundred and five (245) two hundred and forty-five (246) two hundred and forty-six (247) two hundred and forty-seven (248) two hundred and forty-eight (249) two hundred and forty-nine (250) two hundred and fifty (251) two hundred and fifty-one (252) two hundred and fifty-two (253) two hundred and fifty-three (254) two hundred and fifty-four (255) two hundred and fifty-five (256) two hundred and fifty-six (257) two hundred and fifty-seven (258) two hundred and fifty-eight (260) two hundred and sixty (260) two hundred and sixty-one (261) two hundred and sixty-one (262) two hundred and sixty-two (285) two hundred and eighty-five (286) two hundred and eighty-six (287) two hundred and eighty-seven (288) two hundred and eighty-eight (289) two hundred and eighty-nine (290) two hundred and ninety, making seventy in or building lots containing eighty feet front, by one hundred and fifty feet deep. Also the following outlots situated between Spring street and Stoney creek,
45 to wit: Lots numbered one (1) four and nine (9) as will appear on a plan and division of that part of the land situated between Spring street and Stoney creek as made and agreed on the fifteenth day of February 1830, and now filed for record: Likewise one lot on the river shore, bounded as follows: Beginning where a stake stands at high-water mark, six feet eight inches, south of where the southern boundary line of lot number thirty-two if continued would strike, the said high-water mark, on the east edge of the lot set apart for a public walk, thence up the river with said east edge of the public walk and with high-water mark four hundred and thirty-three feet four inches to another stake at high-water mark, six feet eight inches north of where the northern boundary line of lot number twenty-nine would strike the river at high water. Thence eastwardly in a line parallel to the said northern boundary line of said lot twenty-nine to the river, thence down the river four hundred and thirty-three feet four inches, thence westwardly on a line parallel to the said southern boundary line of lot number thirty-two, to the beginning with all the rights, and privileges of erecting wharves thereon, but not warehouses, and it is distinctly understood and agreed by the parties of the first part, that all the lots either now or heretofore sold and conveyed by them unto the said William Christy on the river bank shall extend to the river with the right of erecting wharves and warehouses thereon, and with all other rights and privileges (ferriage excepted) thereunto belonging or in any way appertaining. Also a parcel of ground, bounded on the north by the northern boundary line of the original survey on the east by lot number four of the outlots, on the south by Spring street and on the west by Sixth street. Also that parcel of ground lying immediately north of the block of lots set apart for a burying ground, and bounded on the north by the northern boundary line of the original survey, on the east by Sixth street, on the south by Montgomery street and on the west by a fifty-acre lot this
46 day conveyed, also unto the said Christy the said parcels of ground supposed to contain about four acres more or less. Likewise fifty acres of land, more or less lying west of the last-men-

tioned parcel of ground, and bounded as follows, beginning at the intersection of the west edge of Seventh street if it had been continued north and the north boundary line of the original survey of 374 arpens thence running south seventy-four degrees thirty minutes west, twenty-two chains and ten links, thence south fifteen degrees and thirty minutes east, twenty-one chains, thirty-one links, thence north seventy-four degrees and thirty minutes east, twenty-four chains and seventy links to Seventh street, thence north twenty-one degrees thirty minutes west, and with Seventh street if it had been continued twenty-one chains and thirty-one links to the beginning. All of which will more fully appear by reference to the plan of the town of North St. Louis now herewith filed and to be taken as part of this conveyance. To have and to hold the said described lots and lands with the hereditaments and premises hereby granted and intended to be granted with the appurtenances unto the said William Christy his heirs and assigns to and for the only proper use benefit and behoof of him the said William Christy his heirs and assigns forever, and the said parties of the first part do hereby covenant and agree to and with the said William Christy his heirs and assigns by these presents that they will warrant and forever defend the said described premises or lots and lands hereby granted with the appurtenances unto the said William Christy his heirs and assigns against themselves and their heirs and all persons claiming by through or under them.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first within mentioned.

WM. CHAMBERS. [SEAL.]
THOS. WRIGHT. [SEAL.]
MARY ANN WRIGHT. [SEAL.]

Signed, sealed and delivered in presence of—

EDW'D T. CHRISTY.
47 R. WASH.
J. DEAN.
WM. WRIGHT.

STATE OF MISSOURI, *ss:*

Be it remembered that on this first day of September, eighteen hundred and thirty, personally appeared before me, a judge of the supreme court in and for the State of Missouri, the above and within named William Chambers, who is personally known to me to be the person whose name is subscribed to the within and foregoing deed as having executed the same, and acknowledged — as his act and deed for the purposes therein expressed. Taken and certified this day and date last above written.

R. WASH,
Judge of the Supreme Court.

STATE OF MISSOURI, *ss:*

Be it remembered that *that* on this thirty-first day of May, eighteen hundred and thirty-six, personally appeared before me, a judge of the supreme court in and for the State of Missouri, the above and within named Mary Ann Wright, who is personally known to me to be the person whose name is subscribed to the within and foregoing deed as having executed the same, and acknowledged — as her act and deed for the purposes therein expressed. Taken and certified this day and date last above written.

R. WASH,
Judge of the Supreme Court.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Be it remembered that on this thirty-first day of May, in the year of our Lord one thousand eight hundred and thirty-six, before me, the clerk of the circuit court within and for the county aforesaid, came Robert Wash and Edmund T. Christy, both of whom are known to me to be the persons whose names are subscribed to the within and foregoing instrument of writing as witnesses thereto, and who, being examined by me under oath, declared that Thomas Wright, whose name is subscribed to the said instrument as a party thereto, was the person who executed the same; that he
48 signed and sealed the same in the presence of these affiants, who thereupon subscribed their names thereto as witnesses thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, the date aforesaid.

(Ss.) I. N. RULAND, *Clerk.*

Filed for record May thirty-first, 1836, and recorded 20th June, 1836.

I. N. RULAND, *Recorder.*

STATE OF MISSOURI, }
City of St. Louis. }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by William Chambers *et al.* to William Christy, together with the acknowledgments and date of filing and recording thereof, as the same remain of record in my office in Book X, page 30.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this 12th day of March, A. D. 1896.

M. D. LEWIS, *Recorder.*

Mr. JOHNSON: I now offer in evidence certified copy of the will and probate of the will of William Christy, simply calling your honor's attention to his giving his wife a life estate in same property, and to the children of his deceased daughter such parts as

would have been their mother's had she survived and had died intestate.

Mr. ALLEN: To that we make the same objection, as not referring to the property here and not being competent, material, or relevant.

COURT: Objection overruled.

To which ruling defendants duly excepted.

Said will and probate were read and are as follows:

I, William Christy of North St. Louis in the county of St.
49 Louis & State of Missouri do make this my last will and testament I give and bequeath to my beloved wife Martha T. Christy for & during her life, two entire blocks of six lots each, of land on which I now reside and otherwise occupy with all the buildings and other appurtenances thereunto belonging for a place of residence for her and any of my children she may choose to live with her, I also give and bequeath to my beloved wife aforesaid for her support and the support & education of my young and unmarried children all my income of every kind all the slaves which I may own at my death; and I do hereby authorize my executors hereafter named to sell or otherwise dispose of any of my slaves at the request of my wife and to supply their places with others more suitable, and it is my will and desire, that my wife shall and she is hereby at liberty to bestow my slaves at the time of her death to any one of my children or make equal division thereof amongst them or otherwise as she may think best. I also give and bequeath to my beloved wife her heirs and assigns forever, all my stock of horses, cattle, &c., all my household & kitchen furniture, & provisions which may be on hand at the time of my death also for her support & the education of my daughter Virginia, all the monies which may be due me after my debts are paid, and all the rents and proceeds of my property of every description for and during her life and I hereby authorize and empower my executors or any two of them to sell any of my land not otherwise disposed of for the payment of my debts also to make conveyance to my lands which I may have sold and not conveyed, in as full & ample a manner as if done by me. I also give and bequeath to my granddaughters Mary Ann Berry, Martha Eliza Berry & Frances Wash, children of my daughter Frances W. Christy such portion of my landed estate as would have been their mother's had she survived me & I had died intestate to be divided equally between them. I also give and bequeath to my daughter Virginia M. Christy the two blocks of lots &c. herein willed to her mother during her life, to her the said V. M. Christy & the heirs of her body forever, but should she
50 die without having heirs of her body, the property hereby willed to her & her mother, during their lives shall then be & become the property of Edmund T. Christy & Howard T. Christy to them & their heirs of their bodies or either of them, in case that but one of my said sons shall leave a legal or legal heirs of his body that one shall inherit the aforesaid property. Should my grandson Thomas Wright live until he is fifteen years of age and be then at college my executors or any one of them are hereby empowered to

dispose of as much of my landed estate as will enable them to pay three hundred dollars yearly for three years in support of his education if necessary, it is also my will that my executors or any one of them shall pay to my daughter Virginia from the income of my estate yearly four hundred dollars to commence after the death of her mother, should she be then unmarried and continue the payment yearly until she shall be united in the bonds of matrimony.

All my North St. Louis property which has not or may not be disposed of before my death & which lots or pieces of land can be divided by the numbers which will be found in the deed made to me by my partners each taking a proportion of the most valuable & least valuable with a deduction from those who has or may have received a lot or lots so as to do equal justice to all without interfering in any manner with the houses or lots willed to my daughter Virginia. In order to provide the means to pay off the legacies herein contemplated, I hereby reserve from sale or division among my children a small block of six lots of land lying between Tenth & Eleventh streets within my meadow field, & a little west of the Catholick college, and numbered seventeen, eighteen, nineteen, thirty, thirty-one, thirty-two, the said lots or any part of them my executors or any one of them are hereby fully empowered to sell & convey and dispose of the money agreeably to my intentions made known in this will. Taking into consideration the present state of the remaining members of my family, I think it but just & equitable that my granddaughter
51 Martha J. Swearingen shall receive only one-half of such proportion of my landed estate as would have been her mother's had she survived me, and I had died intestate. I give & bequeath to my daughter Virginia the four western tenements of my brick row with their width of the lot to the southern line of K lot, with the right to use the water of the well in s'd lot without restraint; and lastly I do hereby nominate and appoint Judge Robert Wash, Gen'l W. H. Ashley, Nathaniel P. Taylor and my old friend Gen'l William Clark executors of this my last will and testament, who are hereby or any two of them, fully empowered to transact the business contemplated by this my last will; should it so happen that any one or more of the persons above named as my executors shall find it inconvenient to act or having acted shall wish to withdraw, they or either of them are hereby authorized to appoint his successor or successors who when thus appointed shall possess the same power and authority under this my will as those appointed now by me.

Note, the words, all my income of every kind, interlined between ten & eleven from the top in first page *was* interlined by me, and the words, four, in the second page was made by me.

January 9th, 1896 (?).

W. CHRISTY.

Witness- present:
B. G. FARRAR.
HARRIET M. DEAN.

NOTE.—The word four, in the eighteenth line above, was written by me. W. CHRISTY.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that at a term of the county court within and for the county aforesaid, begun and held at the city of St. Louis, in said county, on the first Monday in May, in the year of our
52 Lord one thousand eight hundred and thirty-seven, personally appeared, in open court, on the eighteenth day of May, in the year and at *at* the term aforesaid, Harriet M. Dean, one of the subscribing witnesses to the foregoing and annexed instrument of writing, who, being duly sworn according to law, upon her oath deposed and said that she was present and saw William Christy make this first signature to the said instrument, and heard him acknowledge it to be his hand and seal, and is under the impression that he said it was his last testament, and that she witnessed and signed the same as a witness in the presence and at the request of said William Christy. She further deposed that she did not know anything about the other memorandums. And on the eighteenth and twenty-second day of May, in the year and at the term aforesaid, also appeared Bernard J. Farrar, the other subscribing witness to the said annexed instrument of writing, who, being duly sworn according to law, upon his oath deposed and said that he signed the said instrument in the presence and at the request of said William Christy, the testator. He further deposed that he knew nothing of any of the signatures to said instrument except the first signature thereto, and both said witnesses deposed and said that at the time they witnessed the same the said William Christy was of sound and disposing mind, to the best of their knowledge, observation, and belief; whereupon, on the twenty-third day of said month of May, in the year and at the term aforesaid, it was considered by said court that the foregoing and annexed instrument of writing was duly proved to be the last will and testament of said William Christy, deceased, and granted probate thereof.

In testimony whereof I, Henry Chouteau, clerk of said county court, have hereunto set my hand and the seal of said
[SEAL.] court, at office, in the city of St. Louis, this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-seven.

53 HENRY CHOUTEAU, *Clerk.*

STATE OF MISSOURI, } ss:
County of Saint Louis, }

I, Henry Chouteau, clerk of the county court within and for the county aforesaid, do certify that the foregoing last will and testament and certificate of probate are duly recorded in my office in the record of letters and wills, Book B, page 334 and following.

In testimony whereof I have hereunto set my hand and seal of said court, at the city of St. Louis, this twenty-fourth day
[SEAL.] of May, in the year one thousand eight hundred and thirty-seven.

HENRY CHOUTEAU, *Clerk.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Joseph A. Wherry, clerk of the probate court within and for the city of St. Louis aforesaid, do hereby certify the foregoing to be a true and complete copy of the last will and testament of William Christy, deceased, and of the probate thereof as fully as the same remains on file and appears of record in my office.

In witness whereof I hereto set my hand and affix the seal of said court, at office, in St. Louis, this fourteenth day of March, [SEAL] 1896.

JOS. A. WHERRY, *Clerk.*

Mr. POLLARD: What date is the probate of the will?

Mr. JOHNSON: It was probated the first Monday in May, 1837.

Mr. JOHNSON: I next offer in evidence proceedings in partition between the heirs and legatees of William Christy, being case of Howard F. Christy *et al. vs.* James F. Swearingen *et al.*, No. 562, July term, 1840, circuit court, county of St. Louis, chancery,
54 in which this property, among a great deal of other property left, was partitioned among his heirs. I presume it is not worth while to read the lengthy documents. I will offer the pleadings in evidence, which describe this lot # 9 as belonging to the heirs; also plat marked No. 2, attached to or made part of an answer.

Mr. ALLEN: To that we enter the same objection—not the property in controversy; not being in any way material, competent, or relevant.

COURT: Objection overruled.

To which ruling defendant excepted. Said pleadings and plat No. 2 were read and are as follows:

St. Louis Circuit Court.

HOWARD F. CHRISTY and Others } In Chancery.
vs.
SWEARINGEN & Others.

The Answer of William T. F. Wright, Martha Ann Wright, Thomas Wright, & Mary Wright, Infants, by Their Guardian ad Litem, J. D. Johnson.

The said defendants, William T. F. Wright, Martha Ann Wright, Thomas Wright, and Mary Wright, by their guardian aforesaid, in answer to said amended bill say that they are ignorant of the matters therein set forth, and they pray the court that their interests may not sustain injury by reason of their tender years, but that what is just and right in the premises may be done, and they pray to be

hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, &c.

WILLIAM T. F. WRIGHT,
MARTHA ANN WRIGHT,
THOMAS WRIGHT, AND
MARY WRIGHT,
By their guardian, J. D. JOHNSTON.

HOWARD F. CHRISTY, NATHANIEL P. TAYLOR, & Matilda N., His Wife; Harriet M. Dean, and Others
55 *vs.*
JAMES T. SWERINGEN, MARY ANN WRIGHT, and Others.
} In Chancery.

And the said Mary Ann Wright, one of the said defendant-, by her solicitor, comes and exhibits the following interrogatories to certain of the said complainants, to wit, to the said Howard F. Christy, Nathaniel P. Taylor, Matilda N. Taylor, Harriet M. Dean, Virginia Smith, and Martha T. Christy, to be by them specially answered:

1st. Do you or either of you know the fact that William Christy, deceased, in his lifetime (and, if so, at what time) made a distribution of certain of his real estate, by lottery or otherwise, amongst certain of his children; if so, what was the mode of conducting the said distribution or allotment, and who were the parties thereto?

2nd. Were there any persons who drew or obtained property by said distributions or allotment; and, if so, who were they and what property was so drawn or obtained by them?

3rd. Was not said distribution or allotment made in good faith and intended to be permanent?

4. Did any of the distributees in said allotment obtain from the said William Christy any deed or conveyance for the share or shares that fell to them in said distribution; if so, who were they that obtained such deed or conveyance?

5. Did not the said defendant, Mary Ann Wright, at the distribution or allotment aforesaid, obtain or draw a certain block of ground situated in said Christy's forty-arpen lots; and, if so, what was the number of said block, or how was it otherwise designated?

6th. Was not the said block of land from the time of said distribution or allotment regarded by said William Christy as the absolute property of the said Mary Ann Wright, and did not the said William Christy repeatedly offer to sell said block for her,
56 recognizing it as hers?

7th. Did not the said William Christy afterwards propose to said Mary Ann Wright to sell said block of land for her, along with his own property, at the time of his sale of lots in his addition to the city of St. Louis, and was not the same so sold with her consent?

8th. Is not the said block of land the same which was sold by said William Christy at the time of his sale aforesaid for the sum of eleven thousand three hundred dollars or thereabouts, with which sum the said Mary Ann Wright stands charged in said petition for

partition as an advancement in money from the said William Christy, deceased?

J. D. JOHNSTON.
Solicitor for Mary Ann Wright.

HOWARD F. CHRISTY ET AL.
vs.
JAMES T. SWERINGEN ET AL.

The Separate Answer of Mary Ann Wright, One of the Defendants in the Above Cause.

This respondent, for answer to the said petition, saith she admits all the matters contained on said petition and all the advancements thereon stated as made to her in the lifetime of her father, the said William Christy, deceased, except the advancement of eleven thousand three hundred dollars in money, as charged in said petition. This respondent admits that her said father, some time in the year eighteen hundred and thirty-five, gave to her the block of land mentioned in said petition as that, the proceeds of the sale of which were given to this respondent, and she expressly claims that said block at the time of the sale aforesaid was her property and not the property of her father.

This respondent further sayeth that in the year of eighteen hundred and thirty-five the said William Christy, deceased, made
57 an allotment or distribution of part of his real estate amongst certain of his children, and having made a plan in map of the portion to be divided caused them to cast lots for the same, on which occasion the said block of land fell to the share of this respondent, to whom no deed was executed by said William Christy, although he ever recognized the said block as belonging to this respondent. This respondent also saith that at said allotment others of the children of said William Christy obtained shares of the ground, and to some deeds were actually made for the portions drawn by them. This respondent expressly charges that it is within the knowledge of divers of the parties to this suit, and that it was generally known and recognized among the members of her father's family, that she had drawn the block of land aforesaid, and that in consequence the said block was regarded, as well by her father as the rest of his family, as her property, and that this recognition was strengthened on the part of her said father by repeated acts confirmatory of the claim of this respondent. This respondent further saith that said William Christy, deceased, some time in the month of June, as she believes, in the year of our Lord eighteen hundred and thirty-six, advertised for sale certain of his real estate, and, having before that time repeatedly offered and, with the consent of this respondent, endeavored to effect for her a sale of said block of land, though unsuccessfully, he, the said William Christy, advised the respondent that it might be expedient to sell the said block with his property, which he was about to sell, and this respondent assenting thereto, with the understanding that she

was to have the proceeds of the sale of said block, said block was accordingly advertised and sold by her said father, along with his own property, and the proceeds, to wit, the sum of eleven thousand three hundred dollars, or thereabouts, were paid over or secured to be paid to this respondent, as in right they should
58 have been, not as a donation, but as her due. This respondent further saith that inasmuch as the said block of land was justly hers before the sale thereof and from the time of the distribution or allotment aforesaid, she admits it as an advancement of so much property, to be considered according to its relative value at the time it was allotted, but not otherwise.

All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall award, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

M. A. WRIGHT.

STATE OF MISSOURI, } *ss:*
County of St. Louis, }

Mary Ann Wright, this respondent in the foregoing answer, being duly sworn, upon oath saith that the facts set forth in said answer, so far as they are stated of her own knowledge, are true, and so far as they are stated upon the knowledge of others she believes to be true.

M. A. WRIGHT.

Sworn to & subscribed before me this 26 day of March, 1840.

J. W. RULAND, *Clerk.*

HOWARD F. CHRISTY, NATHANIEL P. TAYLOR & WIFE, HARRIET M. B. DEAN, EDWIN B. SMITH & WIFE, HENRY S. CONE & WIFE, MARTHA ELVIRA BERRY, & FRANCIS S. M. WASH
vs.
JAMES T. SWERINGEN, MARTHA J. SWERINGEN, & MARY ANN WRIGHT.

The Separate Answer of Martha J. Sweringen to the Bill of Com-
59 *plainants.*

This respondent, now and at all times hereafter, saving and reserving to herself all manner of benefit and advantage of exception to the manifold uncertainties and insufficiencies in the said bill contain-, for answer thereto saith that she knows that her grandfather, William Christy, died seized of the real estate in the bill of complaint described, and that he made his will as stated in said bill.

This respondent is not acquainted with the amount or particular property given by her grandfather as advancements to his children.

This respondent knows that she took by descent from her brother-, William C. Farrar and James L. Farrar, undivided interests in the said lots of ground described in the said bill as having been conveyed by her grandfather to her brother- William and James, but

whether the interest thus descended to her from her brothers is an advancement affecting her claim as an heir of her grandfather, this respondent does not know, and submits the same to the court.

This respondent has always understood and believes it to be true that her grandfather sold to her husband, James T. Sweringen, for a valuable consideration and without regard to any purpose of advancing this respondent, the other real estate which in said bill is alleged to be an advancement to this respondent.

This respondent further says that she has no knowledge of any advancement to her mother by her grandfather giving the negro named Phil in the bill mentioned.

This respondent requires proof to be made by the complainants of the advancements which they attempt to claim against her, and reserves the right to prove other advancements made to the other heirs of the said William Christy, deceased, as the same may be discovered; and having fully answered the said bill without that, that she prays to be hence dismissed with her costs in this behalf sustained.

MARTHA J. SWERINGEN.

60 STATE OF MISSOURI, } ss:
County of St. Louis, }

This day personally appeared before the undersigned, a justice of the peace of the county aforesaid, Martha J. Sweringen, who, being duly sworn, upon her oath saith that the matters stated in the foregoing answer, so far as stated on her own knowledge, are true, and so far as stated on the information of others she believes to be true.

MARTHA J. SWERINGEN.

Sworn to and subscribed before me July 14, 1840.

GEO. A. HYDE,
Justice of the Peace, St. Louis County, Mo.

HOWARD F. CHRISTY, NATHANIEL P. TAYLOR & WF., HARRIET M. B. Dean, Edwin B. Smith & Wf., Henry S. Cone & W-fe, Martha Elvira Berry, & Francis S. M. Wash
vs.
JAMES F. SWERINGEN, MARTHA J. SWERINGEN, MARY ANN WRIGHT.

The Separate Answer of James T. Sweringen to the Bill of Complainants.

This respondent, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the manifold errors and insufficiencies in the said bill contained, for answer thereto saith:

That it is true that the said William Christy died seized of the real estate in the said bill described, and that he made his will as is stated in said bill.

61 This respondent knows that his wife, Martha J. Sweringen, took by descent from her brothers, William C. C. Farrar and James L. Farrar, undivided interests in the lots of ground which are

mentioned in the bill as having been conveyed by said William Christy to said William C. and James L. Farrar, but whether the said lots or any part thereof can be legally considered advancements to the said Martha J. Sweringen this respondent knows not, but submits the same to the court.

This respondent denies that the said block or parcel of ground in the said bill described as having been conveyed to this respondent by the said William Christy, by deed dated the second day of June, 1836, was conveyed to this respondent, either in whole or in part or in any form, as an advancement to his wife, Martha J. Sweringen; but, on the contrary, this respondent expressly says that the said block or parcel of ground was conveyed to this respondent in lieu of another lot of ground, which said William Christy had sold to this respondent in the month of November or December, 1835, for the sum of two thousand dollars, and which he declines conveying to this respondent, and by consent of this respondent the block or lot mentioned and described in the bill of complaint was substituted for that which had been purchased by respondent, as aforesaid. The sale when it was made to this respondent, as aforesaid, was made at what was considered by competent judges a full price for the ground so sold, and was made after the lot had been offered by said Christy to others for the same price at which this respondent purchased, and this respondent says that the lot or block which said Christy sold to this respondent for the sum of two thousand dollars, as aforesaid, and which he subsequently declined to convey, was immediately south of that which he afterwards conveyed by his deed of the second day of June, 1836, and was of fully as much value as that which he so conveyed, and so this respondent utterly denies that the said lot or block so conveyed to this respond-
62 ent was or was intended to be an advance to the wife of this respondent.

This respondent has been informed and believes, and therefore charges the fact to be, that the negro named Phil., mentioned in the bill as an advance to the mother of the said Martha J. Sweringen, was never given or received as an advancement of the mother of said Martha J. Sweringen.

This respondent, further answering, says that the said complainants have not truly stated the advancements made to some of them severally, nor have they stated all the advancements made to the said Mary Ann C. Wright, as this respondent believes, and this respondent will file interrogatories to some of said complainants which he prays the court to compel them to answer.

And this respondent, having fully answered said complainants' bill, without that, &c., prays to be hence dismissed with his costs.

J. T. SWERINGEN.

STATE OF MISSOURI, }
County of St. Louis. }

This day personally appeared before me, the undersigned, a justice of the peace of the county aforesaid, James T. Sweringen, who, being duly sworn, upon his oath saith that the matters in the foregoing

answer contained, so far as the same are stated on his own knowledge, are true, and so far as the same are stated on the information of others he believes to be true.

J. T. SWERINGEN.

Sworn to & subscribed before me July 14, 1840.

GEO. A. HYDE,
Justice of the Peace, St. Louis County, Mo.

St. Louis Circuit Court.

HOWARD F. CHRISTY & Others
vs.
JAMES T. SWERINGEN & Others.

63 *Answer of Martha T. Christy to the Interrogatories Exhibited by Mary Ann Wright.*

The said Martha J. Christy, in reply to the interrogatories filed by said Mary Ann Wright, answereth and saith:

To the first interrogatory she saith that the said William Christy in his lifetime made a lottery with the intention of distributing a certain portion of his real estate among his children & heirs, to wit, Edmund T. Christy, Mary Ann Wright, Matilda N. Walker, Harriet M. Dean, Howard F. Christy, Virginia M. Smith, & the heirs of his daughters Frances & Sarah, but that he afterwards abandoned the distribution of said property in that manner & never carried it into effect; that she, this respondent, believes that some of the allotments which were drawn to the names of one or two of the children (she thinks, perhaps, Edmund & Matilda) were deeded to them by said William after he had resolved not to carry the distribution by lottery into effect. Said William Christy said at the time that he abandoned the lottery because some of the children drew more front and valuable property than others, and that such a distribution would therefore be unequal and unjust, and this respondent is positive that said William never did carry the said lottery distribution into effect. The said William gave his children property as they seemed to be in need of it or made application for it, but he never did during his lifetime make any general distribution of any of his property among his children, by lottery or otherwise. The lottery referred to was drawn, as the said William told this respondent, out of — hat by respondent's granddaughter, Eliza Dean, in presence of said William and Judge Wash, in the year eighteen hundred thirty-five or six, but, as above stated, it was never carried into effect by an actual division or conveyance of the property.

2. To the second interrogatory she says that allotments of property were drawn to the names of all his children, but, the distribution of the property in that manner having been abandoned by him, the portions drawn to their names in the said lottery were
64 never distributed to the children. The property drawn in the lottery to the names of Edmund and Matilda was afterwards

given to them, not for the reason that they drew it in the lottery or that he, the said William, intended to carry the lottery into effect, but because they wanted possession of some property, & he was as willing to give them that drawn to their names in the abandoned lottery as any other. Some of the children complained to the said William Christy respecting the said Matilda & others getting the front or most valuable property, when he answered and said to them and to this respondent, that if any of the children chose to take or got front property *on* that which was more valuable than that which remained, it should be of no advantage to them, and that the next of his children should lose nothing, as any difference in the value of property would be made up to the rest of the children when they came to receive their portions at a final division of his property. This respondent further says that she does not know the particular allotments or portions of property drawn to the names of the said children respectively in said lottery.

3. To the third interrogatory she says that she believes that said lottery was drawn by said William in good faith & with the intention of distributing the real estate embraced in it according to said drawing & of making said distribution permanent, but that said William altered his mind & never carried it into effect.

To the fourth interrogatory she says that deeds were given to the said Edmund T. & to the said Matilda N. (and this respondent has also understood, to the said Martha T. Sweringen) for certain property allotted or drawn to their names in said lottery, but said deeds were given after he, the said William, had wholly abandoned the idea of a general distribution by the said lottery. He, the said William, would have deeded to the above-named persons any of the several blocks drawn in the name of said Mary Ann or of the said Virginia as soon as any of the several blocks drawn in their own name, if they had desired it.

To the fifth interrogatory she says that the said Mary Ann Wright drew in the said lottery to her own name certain portions of real property, about six blocks (being about an equal number with the other children), none of which portions were ever given or conveyed to her, the said lottery having been abandoned, as aforesaid. This respondent does not know whether the property which the said William sold for eleven thousand dollars, that he gave to said Mary Ann, was one of the several blocks which stood in her name on the plat of the said abandoned lottery or not.

6. As to the sixth interrogatory she saith that the said William Christy never did regard the said block or any other property drawn to the name of said Mary Ann in said lottery as her absolute property. This respondent remembers that said Mary Ann Wright complained to her father, the said William, that she needed pecuniary assistance, and the said William replied to her that he would sacrifice property to aid her, and he then offered to sell any of his property to raise money for her; to which offer the said Mary Ann answered that she could not consent to his sacrificing his property for her. The said William thereupon offered for sale at various times as much of his property (this respondent thinks it was a block

of ground) as he thought would bring the amount of money which the said Mary Ann needed; that he did not succeed in selling it until his sale of lots in his addition to St. Louis. Soon after that sale the said William gave to his said daughter, Mary Ann, the sum of eleven thousand and some two or three hundred dollars; which sum of money the said William told this respondent must be considered an advancement to the said Mary Ann Wright. In a conversation between this respondent and said William soon afterwards this respondent, commenting on that gift, asked him how he could give one child so much more than the others; to which he replied, "Not at all; not at all; the eleven thousand dollars is, of course, to be considered so much out of Mary Ann's portion of my estate."

66 7. In answer to the seventh interrogatory she says that she knows nothing further than that during the time when said William was trying to sell his property at a sacrifice to raise money for the said Mary Ann this respondent heard the said Mary Ann say to him: "Father, I do not want you to sacrifice your property for me; I cannot consent to it." To which he answered: "Mary Ann, if you can wait until my large sale, I can sell property to better advantage than when selling one block, and will then give you the money."

8. As to the eighth interrogatory she says that she knows nothing of the matters therein inquired of.

MARTHA T. CHRISTY.

COUNTY OF ST. LOUIS, *ss:*

Martha T. Christy, being duly sworn, on her oath saith that the foregoing answer is true.

MARTHA T. CHRISTY.

Sworn and subscribed before me this 10th July, 1840.

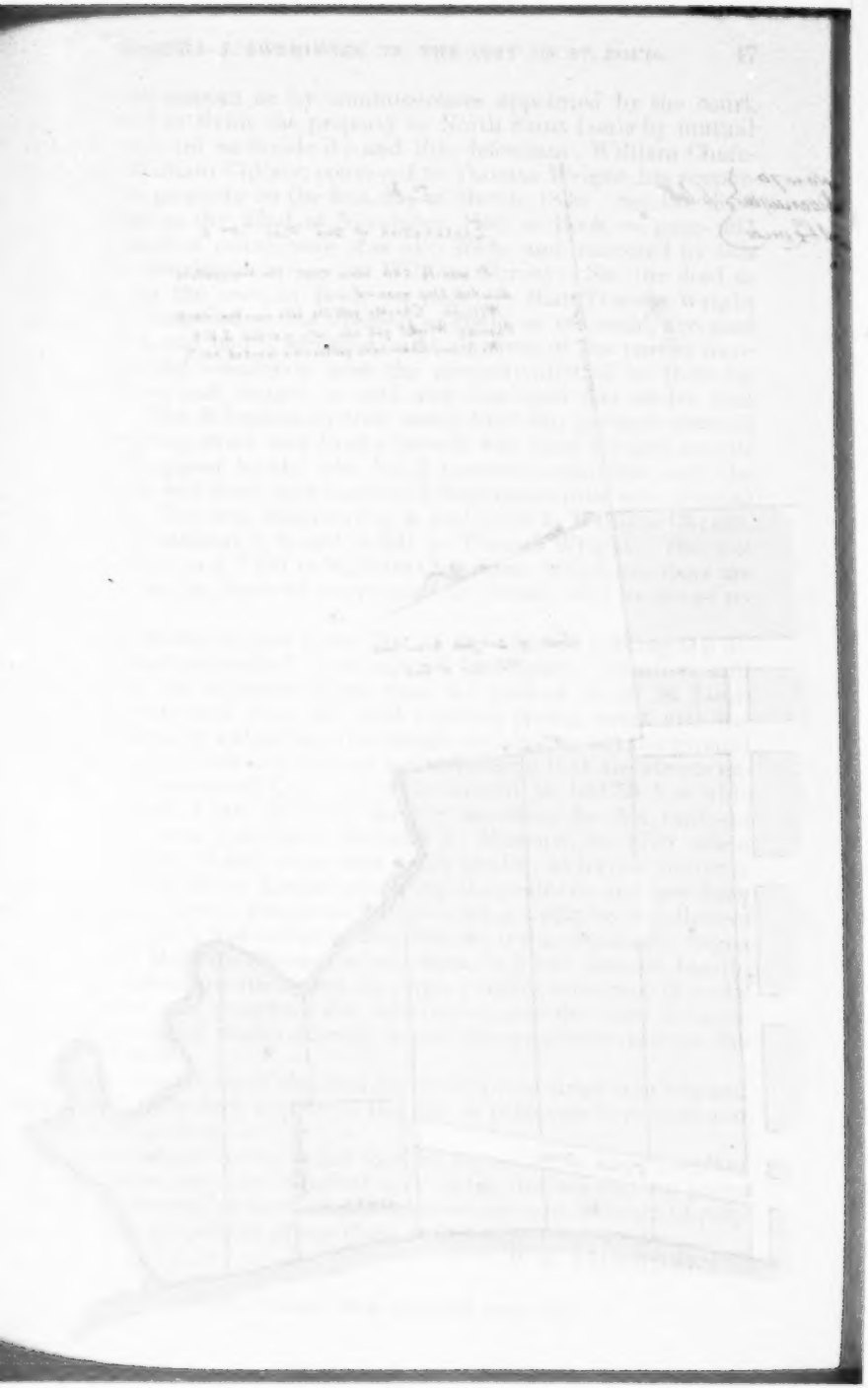
BENJ. F. McKINNEY,
Justice of the Peace, St. Louis County, Mo.

St. Louis County Court.

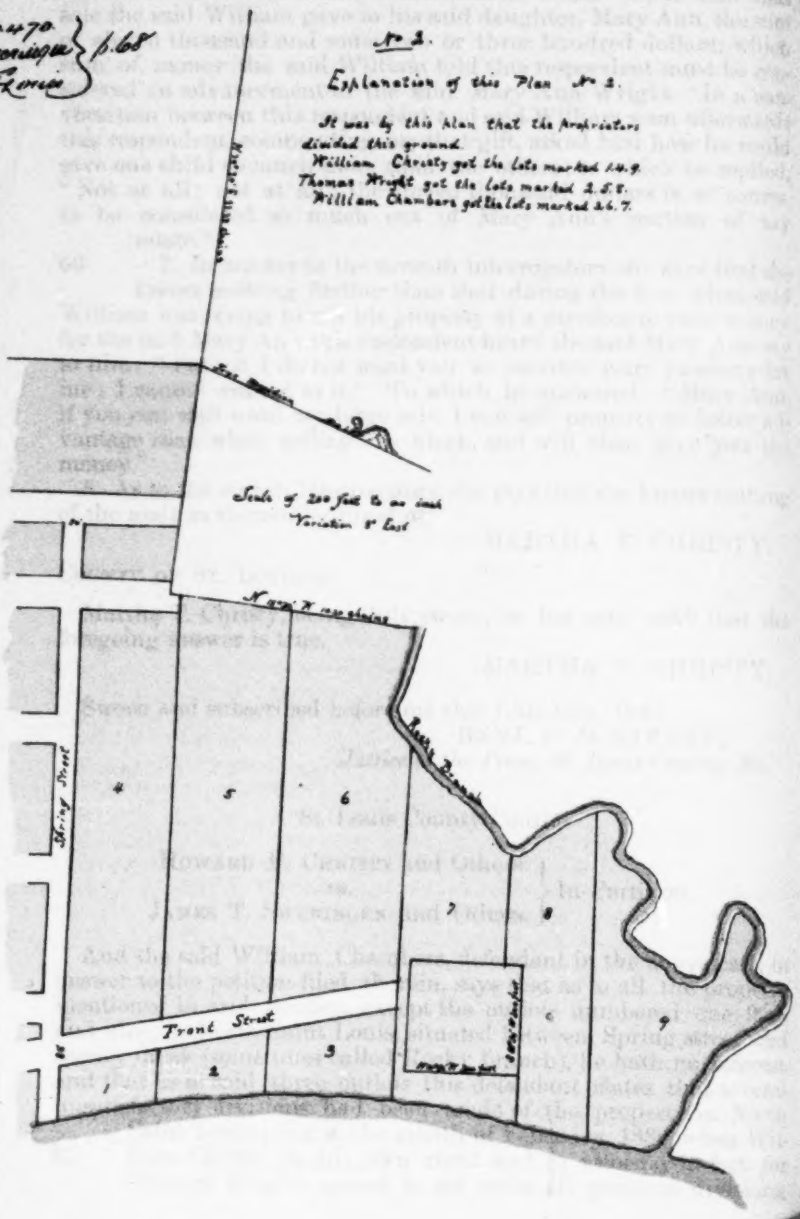
HOWARD F. CHRISTY and Others } In Partition.
vs.
JAMES T. SWERINGEN and Others. }

And the said William Chambers, defendant in the above case, in answer to the petition filed therein, says that as to all the property mentioned in said petition, except the outlots numbered one, four, and nine, in North Saint Louis, situated between Spring street and Stoney creek (sometimes called Rocky branch), he hath no interest, and that as to said three outlots this defendant states that several unsatisfactory divisions had been made of the property in North Saint Louis prior to the month of February, 1830, when Wil-

67 liam Christy, in his own right and as attorney-in-fact for Thomas Wright, agreed to set aside all previous divisions,



No 470
Chouteau
St Louis
} p. 68



whether by consent or by commissioners appointed by the court, and proceed to divide the property in North Saint Louis by mutual consent, and did so divide it; and this defendant, William Chambers and William Christy, conveyed to Thomas Wright his proportion of the property on the first day of March, 1830. See the deed as recorded on the 22nd of November, 1836, in Book —, page 463 & '4. A deed of conveyance was also made and executed by this defendant, bearing date ——, to William Christy. See the deed as recorded on the ——, in Book —, page —; that Thomas Wright afterwards acceeded to the division so made, as aforesaid, accepted of the deed, and had it recorded; and all three of the parties have since exercised ownership over the property allotted to them by that division, and bought or sold and conveyed lots under that division. This defendant further states that the ground situated between Spring street and Rocky branch was then divided, as will more fully appear by the plat No. 2, herewith exhibited, and the lots as there laid down and numbered from one to nine were divided as follows: The lots numbered 1, 4, and 9 fell to William Christy. The lots numbered 2, 5, and 8 fell to Thomas Wright. The lots numbered 3, 6, and 7 fell to William Chambers; which numbers are referred to in the deeds of conveyance to Christy, and as above referred to.

This defendant further states that at the time of making the division as above described it was agreed by Christy, Chambers, and Wright, by his attorney-in-fact, that the plan of North St. Louis should be extended over the land between Spring street and the Rocky branch by extending the streets and laying out the ground into lots, with a full and distinct understanding that the streets extending out westward from the river should be but 50 feet wide instead of 60. Nothing farther was done in this business
68 until this defendant returned to Missouri, in 1736, when William Christy expressed much anxiety to have a resurvey made of North Saint Louis, embracing the southern and northern enlargement thereof, preparatory to preparing a plat or plan thereof for record, and it was not until this defendant was repeatedly urged by the said William Christy, — was then in a bad state of health, that this defendant undertook to employ mathematicians to make the resurvey and to extend the subdivision over the land between Spring street and Rocky branch, as per the agreement made in the spring of 1830.

Which subdivision of the land north of Spring street into lots and streets will more fully appear by the plat or plan now here filed and marked number three.

This defendant further states that he expended in the execution of this agreement one hundred and eighty dollars, and he prays that the court will order the legal representatives of William Christy to pay their proportion of one-third of that sum.

WM. CHAMBERS.

(Here follows map marked page 68.)

69 Mr. ROBERT: You only offer the pleadings?
Mr. JOHNSON: Yes.

Mr. JOHNSON: I next offer decree made in the case, circuit court of the county of St. Louis.

Mr. ALLEN: Kindly give the book number and page.

Mr. J.: Recorded in Chancery Record Book #2, page 78—that is, the decree appointing commissioners in the case. The commissioners reported, including a plat of the premises during the fall, and report was confirmed by the court in January, and is the same Record Book #2, page 177.

Said decree appointing commissioners & confirming report and plat *were* read and *are* as follows:

SATURDAY, *January 30th*, 1841.

HOWARD F. CHRISTY, NATHANIEL P. TAYLOR, & MATILDA N., His Wife; Harriet M. B. Dean, Edwin B. Smith, & Virginia, His Wife; Henry S. Coxe & Mary Ann, His Wife; David D. Mitchell & Martha Eliza, His Wife, & Frances S. M. Wash, by Her Guardian, Robert Wash,

vs.

JAMES T. SWEARINGEN & MARTHA I., His Wife; MARY ANN Wright, Charles W. Schaumberg, & Orleana C., His Wife; William F. F. Wright, Martha Ann Wright, Thomas Wright, Mary Wright, & William Chambers.

Now, at this day, come the said Frances S. M. Wash, by her said guardian, and all the other parties, complainants and defendants, to this suit, by their respective solicitors, and pray the court to enter a decree herein ascertaining the rights of the said heirs and representatives of said William Christy, deceased, in the real estate in the bill mentioned, and the value and amount of the several advancements made by the said William Christy in his lifetime to be deducted from their respective shares.

Whereupon the court, with the consent of all the parties hereto to all the terms of this decree, doth order, adjudge, and decree
70 that said Martha T. Christy, the widow of said William Christy, deceased, is entitled to no interest in said lands and real estate in the bill mentioned in the partition of the same, she now agreeing to relinquish the same in favor of the heirs and consenting that the same shall be divided among them according to their respective rights; and the court doth further order, adjudge, and decree that said Matilda N. Taylor is entitled to thirteen-eighty-fourths of the lands and real estate in the bill prayed to be divided, from which is to be deducted eighteen thousand five hundred and forty-nine dollars and sixty-two cents, being the value of advancements on account of her share; that Mary Ann Wright is entitled to thirteen-eighty-fourths of the lands and real estate in the bill prayed to be divided, from which is to be deducted fourteen thousand one hundred and sixty-eight dollars and fifty cents, being the value of advancements on account of her share; that Howard F.

Christy is entitled to thirteen-eighty-fourths of the lands and real estate in the bill prayed to be divided, from which is to be deducted eight thousand nine hundred and sixty dollars and eighty-five cents, being the value of advancements on account of his share; that Harriet M. Dean is entitled to thirteen-eighty-fourths of the lands and real estate in the bill prayed to be divided, from which is to be deducted four thousand three hundred and seventy dollars and forty-two cents, being the value of advancements on account of her share; that Martha J. Swearingen is entitled to six-eighty-fourths of the land and real estate in the bill prayed to be divided, from which is to be deducted three thousand four hundred dollars, being the value of advancements on account of her share; that Mary Ann Coxe is entitled to thirteen two hundred and fifty-two parts of the lands and real estate in the bill prayed to be divided, from which is to be deducted one hundred and ninety-four dollars and thirty-three and one-third cents, being the value of advancements on account of her share; that Martha Eliza Mitchell is entitled to thirteen two hun-
71 dred and fifty-two parts of the lands and real estate in the bill prayed to be divided, from which is to be deducted one hundred and ninety-four dollars and thirty-three and one-third cents, being the value of advancements on account of her share; that Frances S. M. Wash is entitled to thirteen two hundred and fifty-two parts of the land and real estate in the bill prayed to be divided, from which is to be deducted one hundred and ninety-four dollars and thirty-three and one-third cents, being the value of advancements on account of her share; that Virginia M. Smith is entitled to thirteen-eighty-fourths of the lands and real estate in the bill prayed to be divided, and that no advancement- have ever been made on account of her share; and the court doth further order, adjudge, and decree that partition be made among the said heirs of William Christy, parties hereto, of the lands, tenements, and real estate in the bill prayed to be divided, according to their respective rights as herein ascertained, respect being had to the advancements as herein declared, which lands, tenements, and real estate to be divided are as follows, viz: "A tract of land lying in St. Louis county, Missouri, containing fifty arpens, being part of a larger tract of land granted by concession to Antoine Vincent Bouis and conveyed to said William Christy by deeds of Marie V. Bouis and Andre V. Bouis and others, dated, one of them, the nineteenth of April, the other dated the twenty-second of April, in the year eighteen hundred and sixteen, said fifty arpents bounded as follows: Beginning at a stake on the River Gingrass, a corner of said tract, thence up the said River Gingrass, with its meanders, to a certain point, and thence eastwardly, in a parallel line with the eastward line of Hyacinthe St. Cyr's tract, to the southward line of the tract of said grantees, and thence south forty-eight degrees west with said line to the beginning, so as to include the quantity of fifty arpents; also sundry lots and parcels of land lying in said county just northwardly
of the city of St. Louis and being portions of a tract of
72 land conveyed by Louis Labeaumme to William Chambers in the year eighteen hundred and sixteen, which portions (with

others disposed of by said Christy) were conveyed to William Christy in and by a certain deed of partition executed to him by William Chambers & Thomas Wright and wife, dated the first day of March, eighteen hundred and thirty, which lots and parcels of land are as follows, being numbered according to the plat of the town of North St. Louis with the enlargement thereof, to wit: lots numbered sixty-nine, seventy-four, seventy-seven, seventy-nine, eighty-four, ninety-four, ninety-six, one hundred and thirty-three, one hundred thirty-five, one hundred thirty-six, one hundred thirty-seven, one hundred forty-four, one hundred forty-five, one hundred forty-six, one hundred forty-seven, one hundred and eighty-eight, one hundred eighty-nine, one hundred ninety, one hundred ninety-one, one hundred ninety-two, one hundred ninety-three, two hundred, two hundred one, two hundred and five, two hundred forty-five, two hundred forty-six, two hundred forty-seven, two hundred forty-eight, two hundred forty-nine, two hundred and fifty, two hundred fifty-four, two hundred fifty-five, two hundred fifty-six, two hundred fifty-seven, two hundred and fifty-eight, two hundred and sixty, two hundred sixty-one, two hundred sixty-two, two hundred eighty-five, two hundred eighty-six, two hundred eighty-seven, two hundred eighty-eight, two hundred eighty-nine, and two hundred and ninety, said above-mentioned lots lying in North St. Louis being each eighty-feet front by one hundred and fifty feet deep; also the following outlots in North St. Louis, situated between Spring street and Stoney creek, viz: lots numbered one, four, and nine according to a plan and division of that part of the land, situate between Spring street and Stoney creek, made and agreed on the fifteenth of February, eighteen hundred and thirty; also a lot on the river shore bounded as follows: Beginning where a stake stands at high-water mark six feet eight inches south of
73 where the southern boundary line of lot number thirty-two, if continued, would strike the said high-water mark on the east edge of the lot set apart for a public walk; thence up the river with said east edge of the public walk, and with high-water mark, four hundred and thirty-three feet four inches to another stake at high-water mark, six feet eight inches north of where the northern boundary line of lot number twenty-nine would strike the river at high water; thence eastwardly on a line parallel to the said northern boundary line of said lot twenty-nine to the river; thence down the river four hundred and thirty-three feet four inches; thence westwardly on a line parallel to the southern boundary line of lot number thirty-two to the beginning, with all the rights and privileges of erecting wharves thereon, but not warehouses; also the following tract of land lying in St. Louis county, near and west of the city of St. Louis, containing upwards of seventy acres, described as follows: Beginning at a point in the northern edge of the St. Charles road two hundred and eighteen feet west of Twelfth street, thence running northwardly parallel with Twelfth street three hundred forty-nine feet three inches; thence westward- parallel with the St. Charles road four hundred thirty-six feet; thence northwardly parallel with Twelfth street three hundred forty-nine feet three inches to

Franklin avenue; thence westwardly with said avenue to the end of the forty-arpent field lots; thence southwardly along the west end of said field lots six hundred ninety-eight feet six inches to the St. Charles road; thence eastwardly with said road to the place of beginning, excepting, however, from the above tract four pieces of ground conveyed by said Christy in his lifetime, each being two hundred and eighteen feet wide and three hundred forty-nine feet three inches deep, three of which were conveyed to Orleana Wright, Martha Ann Wright, and Mary Frances Wright, and the other was conveyed to Matilda N. Taylor for Amelia C. Churchill, formerly Amelia C.
74 Walker; also a lot of ground lying in St. Louis fronting northwardly upon Franklin avenue twenty-five feet, including the easternmost tenement of the long brick row at the intersection of Fifth street and Franklin avenue, said lot running back southwardly about one hundred and eight feet, bounded west by the fourth tenement in said row, east by lots of N. P. Taylor and James Dean, and north by said Franklin avenue;" and for the purpose of carrying into effect the partition hereby ordered the court doth appoint William C. Carr, William Glasgow, Joseph C. Brown, Jesse G. Lindell, & Dennis Delaney as commissioners, who, or a majority of them, are hereby directed to examine said lands and real estate and make partition and allotment thereof, as aforesaid, with all convenient speed, so far as the same can be done, and to make report thereof to this court without delay.

HOWARD F. CHRISTY ET AL.
vs.
JAMES T. SWEARENGEN ET AL.

FRIDAY, *January* 6, 1843.

Now, at this day, come parties aforesaid, by their respective solicitors, and all and singular the matters and things upon the exceptions filed to the report of the commissioners herein being seen and heard, and also the evidence in relation thereto being considered, it is ordered and adjudged and decreed by the court that the exceptions to the said report of the commissioners be overruled, and the court doth moreover confirm and ratify the report of said commissioners, which is in the following words, to wit:

St. Louis Circuit Court.

HOWARD F. CHRISTY & Others
vs.
JAMES T. SWERINGEN, MARTHA T., His Wife, & Others. } In Partition in Chancery.

The undersigned, commissioners appointed by the St. Louis circuit court to make partition of the lands and tenements in the bill of complaint mentioned among the heirs of William Christy, deceased, having made affidavit as herewith returned, proceeded to view the said lands and to make the partition

in pursuance and conformity with the decree of this
75 court entered on the thirtieth day of January last, and as a necessary preliminary the- caused a survey and plat to be made of the tract of land, containing about seventy acres, lying to the west of the city of St. Louis, and subdivided the same into lots of convenient size, laying out from east to west through the centre thereof an eighty-foot street, being Morgan street continued, which plat is herewith returned, marked "A," as a part of this report. They also laid out cross-streets at convenient distances, all which appears on the face of said plat, together with the numbers and sizes of the said lots. They state that Morgan street, as it appears on the said map or plat, is occasionally narrower than the width above mentioned, which circumstance is owing to the disposition of sundry of those lots and portions of said tract by the testator in his life without leaving any street along where Morgan street is now laid out, and they have not on said plat extended that street across any such lot. They have, furthermore, subdivided the outlots lying in the tract of land formerly conveyed by Louis Labeaume to William Chambers, partition of which had been made between said Chambers and Thomas Wright and William Christy, and have caused a map or plat of North St. Louis, formerly laid out upon said tract with its extensions and the subdivisions, as aforesaid, made by the undersigned, which plat is herewith returned, marked B, as a part of this report, on which plat are laid down such streets in the part subdivided, as aforesaid, as they deemed it advisable to make for the benefit of those interested. They further state that they have run the lines between the said outlots belonging to Chambers, Wright, & Christy (division of which had been formerly made between them without a survey or measurement of the same. The outlots belonging to said Christy's estate, which they were required by said decree to dividee, were outlots numbered one, four, and nine. Outlot number one embraces block
76 number seven of this plat or map, outlot number four embraces block- numbered seventeen, forty-two, sixty-three, and sixty-six of this map, and outlot number nine embraces the land situate between the most northern fifty-foot street on this map and Stoney creek, and the commissioners believe that they have done full justice both to said William Chambers and to Thomas Wright, heirs & representatives, as well as to the heirs of William Christy, in establishing the said outlots and their boundaries. The undersigned, having carefully put a value upon all of said property, then proceeded to allot to the said heirs of William Christy their respective portions, taking into consideration the advancements as ascertained and declared by the court as a part of the portions of those to whom they had been made or were charged in the decree of the court, and they have allotted to said heirs their respective portions according to the decree, quantity and quality considered, justly & fairly, in their belief, as hereinafter set forth. To Matilda N. Taylor they assign and allot as follows: One lot or parcel of ground situated in the city of St. Louis, being a part of the aforesaid seventy-arpent tract and being lot numbered thirteen on map marked A, and

bounded as follows: on the north by Franklin avenue, east by lot number eleven on said map marked "A," south by an extension of Morgan street, and west-ly by a street laid out on said map, called Fifteenth street, said lot being one hundred and eighty feet in front by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, being lot numbered twenty-three on said map marked "A," and bounded as follows: north by Franklin avenue, east-ly by a street laid out on said map, called Seventeenth street, south by an extension of Morgan street, and west by lot numbered twenty-five on said map, being one hundred and eighty-eight feet in front by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, being lot numbered thirty-four on said map marked "A," and bounded as follows: north by an
77 extension of Morgan street, east by lot numbered thirty-two on said map, south by the St. Charles road, and west by a street laid out upon said map, called Twentieth street, being one hundred and eighty feet in front by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, being lot numbered forty-six on said map marked A, and bounded as follows: north by an extension of Morgan street, east by a lot numbered forty-four upon said map, south by the St. Charles road, and west by a street laid out and upon said map, called Twenty-third street; also one other lot or parcel of ground situated in North St. Louis, so called, and being lot numbered one hundred and eighty-eight on said map marked B, and bounded as follows: on the north by lot numbered one hundred and eighty-nine on said map, on the east by lot numbered one hundred and forty-seven on said map, on the south by a street called Green street, laid out upon said map, and on the west by Fifth street as laid out upon said map, being eighty feet front on Fourth street and one hundred and fifty feet in depth, said lot being in block forty-five as laid down upon said map; also one other lot situated in North St. Louis, in block numbered forty-four upon said map marked "B" and being lot numbered one hundred and ninety-one on said map, bounded as follows: north by lot numbered one hundred and ninety-two on said map, east by lot numbered one hundred and forty-four on said map, west by Fourth street as laid down upon said map, and south by Warren street as laid down upon said map, being eighty feet front on said Fourth street and one hundred and fifty feet deep; also one other lot situated in North St. Louis, in block numbered sixty-one on said map marked B, being lot numbered two hundred and forty-eight on said map, and bounded as follows: north by lot numbered two hundred and forty-nine on said map, east by lot numbered two hundred and two on said map, south by a street called Warren street as laid down upon said map, and west by a street called Fifth street as laid down upon said map, being eighty feet front on said Fifth street by one hun-
78 dred and fifty feet deep; also one other lot situated in North St. Louis, in block numbered sixty-one upon said map marked B, being lot numbered two hundred and forty-nine upon said map, being bounded as follows: north by lot numbered two hundred and fifty on said map, east by lot numbered two hundred and fifty-one

on said map, south by lot numbered two hundred and forty-eight and west by a street called Fifth street upon said map, being eighty feet front on said Fifth street by one hundred and fifty feet deep; also one other lot in said North St. Louis, in block numbered seventeen upon said map marked B, being lot numbered three hundred and nine, and bounded as follows: north by lot numbered three hundred and eight upon said map, east by a street called Second street as laid down upon said map, south by a street called Spring street as laid down upon said map, and west by a lot numbered three hundred and ten on said map, said lot being eighty feet two inches front on said Second street and one hundred *and one hundred* and fifty feet deep; also one other lot in said North St. Louis, in block numbered sixty-three upon said map marked B, being lot numbered three hundred and sixty upon said map, and bounded as follows: north by lot numbered three hundred and fifty-nine upon said map, east by a street called Fourth street upon said map, south by lot numbered three hundred and sixty-one upon said map, and west by lot numbered three hundred and sixty-three upon said map, being eighty feet front on said Fourth street by one hundred and fifty feet deep; to have and to hold the same unto her and to her heirs and assigns forever as her portion of the land divided. The allotment is less, however, by twenty dollars thirty-seven cents than her portion, which sum can be made up to her out of the proceeds of certain lands hereinafter reported to have been sold.

To Mary Ann Wright they assign and allot as follows, viz: One lot or parcel of land situated in the city of St. Louis, in said seventy arpent tract, and being lot numbered nine on map marked A, and bounded as follows: North by Franklin avenue, east by lot
79 numbered seven upon said map, south by an extension of Morgan street, and west by a street laid down upon said map, called Fourteenth street, said lot being one hundred and eighty-eight feet front upon Franklin avenue by three hundred and nine feet three inches deep; also one other lot in said seventy-arpent tract, being lot numbered twenty-four upon said map marked A, and bounded as follows: north by an extension of Morgan street, east by a street laid down upon said map, called Seventeenth street, south by the St. Charles road, and west — lot numbered twenty-six upon said map, said lot being one hundred and eighty feet front on the St. Charles road by three hundred and nine feet three inches in depth; also one other lot, being a part of the aforesaid seventy-arpent tract, and being lot numbered thirty-two on said map marked A, and bounded as follows: north by an extension of Morgan street, east by a street laid out upon said map, called Nineteenth street, south by the St. Charles road, and west by lot numbered thirty-four on said map, said lot being one hundred and eighty-eight feet in front on St. Charles road by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, being lot numbered forty-seven on said map marked A, and bounded north by Franklin avenue, east by a street laid down on said map, called Third street, south by an extension of Morgan street, and west by the St. Charles road, said lot being three hundred and seventy-three

feet four inches front on Franklin avenue, running back three hundred and nine feet three inches to a width upon an extension of Morgan street of two hundred and eighty-six feet three inches; also one other lot in said North St. Louis, so called, in block numbered seven upon said map marked B, and numbered nineteen upon said map, bounded as follows: north by lot numbered twenty upon said map, east by the River Mississippi, south by a street laid down upon said map as Spring street, and west by a street laid down upon said map as Second street, said lot being eighty feet two inches front on said Second street, extending back two hundred
80 and forty feet, more or less, to the River Mississippi; also one other lot, in block numbered thirty-seven upon said map marked B and numbered one hundred and thirty-seven upon said map, and bounded as follows: north by lot numbered one hundred and thirty-eight upon said map, east by lot numbered eighty upon said map, south by lot numbered one hundred and thirty-six upon said map, and west by a street laid down upon said map as Third street, said lot being eighty feet front on said Third street by one hundred and fifty feet deep; also one other lot in said North St. Louis, in block forty-five upon said map, bounded as follows: north by lot numbered one hundred and forty-five, east by a street laid down upon said map as Third street, south by a lot numbered one hundred and forty-seven upon said map, and west by a lot numbered one hundred and eighty-nine upon said map, said lot being eighty feet front upon said Third street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block numbered sixty-nine upon said map marked B and numbered two hundred and sixty-two upon said map, bounded as follows: north by lot numbered two hundred and sixty-one, east by a street laid down upon said map as Fifth street, south by a street laid down upon said map as Green street, and west by a street laid down upon said map as Sixth street, said lot being eighty feet in front on said Fifth street by one hundred and fifty feet deep; also one other lot in said North St. Louis, in block numbered seventeen upon said map marked B, numbered three hundred and twelve upon said map, and bounded as follows: north by a street laid down upon said map as Bright street, east by a lot numbered three hundred and seven upon said map, south by lot numbered three hundred and eleven upon said map, and west by a street laid down upon said map as Third street, said lot being eighty feet in front upon said Third street by one hundred and forty-two feet one inch, more or less, in depth; also one other lot in said North St. Louis, in block sixty-six upon said map marked B, numbered three hundred and sixty-five upon said map
81 and bounded as follows: north by a lot numbered three hundred and sixty-six upon said map, east by a street laid down upon said map as Fifth street, south by a street laid down upon said map as Spring street, and west by a street laid down upon said map as Sixth, said lot being eighty *foot* front upon said Fifth street by one hundred and fifty feet in depth; to have and to hold the same, with all rights, privileges, and appurtenances thereto be

longing, unto her, the said Mary Ann Wright, and to her heirs and assigns forever, as her portion of the lands divided. This allotment exceeds Mary Ann Wright's portion by eighty-three dollars fifty-one cents, which excess can be rectified in the distribution of the proceeds of the sale of certain real estate which could not be divided, as hereinafter set forth.

To Howard F. Christy the undersigned commissioners assign and allot as follows, to wit: One lot or parcel of ground situated in the city of St. Louis and being a part of said seventy-arpent tract, being lot numbered six on said map marked A, and bounded as follows: north by an extension of Morgan street, south by the St. Charles road, east by lot numbered four upon said map, and west — a street laid down upon said map called Thirteenth street, said lot being one hundred and eighty feet front on the St. Charles road by three hundred and nine feet three inches depth; also one other lot or parcel of ground being in said seventy-arpent tract and marked upon said map A as numbered eleven, and bounded as follows: north by Franklin avenue, east — a street laid down upon said map as Fourteenth street, south by an extension of Morgan street, and west by lot numbered thirteen upon said map, said lot being one hundred and eight feet front on Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, being lot numbered thirty upon said map marked A, and bounded as follows: north by an extension of Morgan street, east by lot numbered twenty-eight upon said map, south by the St. Charles
82 road, and west by a street laid down upon said map, called Nineteenth street, said lot being one hundred and eighty feet front on St. Charles road by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered upon said map marked A thirty-five, and bounded as follows: on the north by Franklin avenue, on the east by a street laid out upon said map as Twentieth street, south by an extension of Morgan street, and west by lot numbered thirty-seven on said map, said lot being one hundred and eighty-eight feet front on Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered forty-four upon said map marked A, and bounded as follows: north by an extension of Morgan street, east by a street laid down upon said map as Twenty-second street, south by the St. Charles road, and west by lot numbered forty-six upon said map, said lot being one hundred and eighty-eight feet front on St. Charles road by three hundred and nine feet three inches in depth; also one other lot or parcel of ground situated in North St. Louis, so called, in block numbered seven upon said map marked B, and being lot numbered twenty-one on said map, bounded as follows: on the north by a street laid down upon said map, called Wright street, east by the River Mississippi, south by lot numbered twenty-one upon said map, and west by a street laid down upon said map as Second street, said lot being eighty feet two inches front on said Second street and running back to the river; also one other lot situated in North St. Louis, in block numbered sixty-seven on said map marked B, and being lot num-

bered two hundred and fifty-six on said map, bounded as follows: north by lot numbered two hundred and fifty-five on said map, east by a street laid down upon said map as Fifth street, south by a street laid down upon said map as Montgomery street, and west by a street laid down upon said map as Sixth street, said lot being eighty feet front on said Fifth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block
83 forty-two, numbered upon said map marked B three hundred and thirty-nine, and bounded as follows: north by a street laid down upon said map as Wright street, east by a street laid down upon said map as Third street, south by a lot numbered upon said map three hundred and forty, and west by lot numbered upon said map three hundred and forty-four, being eighty feet front on said Third street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block forty-two upon said map marked B, numbered three hundred and forty upon said map, and bounded as follows: north by lot numbered upon said map three hundred and thirty-nine, east by a street laid down upon said map as Third street, south by lot numbered three hundred and forty-one upon said map, and west by lot numbered three hundred and forty-three upon said map, said lot being eighty feet front upon said Third street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block forty-two upon said map marked B, numbered three hundred and forty-one upon said map, and bounded as follows: north by lot numbered upon said map three hundred and forty, east by a street laid down upon said map as Third street, south by a street laid down upon said map as Spring street, and west by a lot numbered three hundred and forty-two, said lot being eighty feet front upon said Third street by one hundred and fifty feet in depth; also one other lot or parcel of ground situated in said North St. Louis, in block forty-two upon said map marked B, and numbered three hundred and forty-two upon said map, and bounded as follows: north by lot numbered three hundred and forty-three upon said map, east by lot numbered three hundred and forty-one, south by a street laid down upon said map as Spring street, and west by a street laid down upon said map as Fourth street, said lot being eighty feet front on said Fourth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, being in block forty-two upon said map marked B, and numbered upon said map three hundred and forty-three, and bounded as follows:
84 north by lot numbered three hundred and forty-four upon said map, east by lot numbered three hundred and forty upon said map, south by lot numbered three hundred and forty-two upon said map, and west by a street laid down upon said map as Fourth street, said lot being eighty feet front on said Fourth street by one hundred and fifty feet deep; also one other lot in said North St. Louis, in block forty-two upon said map marked B and numbered three hundred and forty-four, and bounded as follows: north by a street laid down upon said map as Wright street, east by lot numbered three hundred and thirty-nine upon said map, south by lot numbered three hundred and forty-three, and west by a street

laid down upon said map as Fourth street, said lot being eighty feet front on said Fourth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block sixty-three upon said map marked B and numbered three hundred and fifty-nine upon said map, and bounded as follows: north by a street laid down upon said map as Wright street, east by a street laid down upon said map as Fourth street, south by a lot numbered three hundred and sixty upon said map, and west by a lot numbered upon said map three hundred and sixty-four, said lot being eighty feet front on said Fourth street by one hundred and fifty feet in depth; to have and to hold the same, with all the rights, privileges, and appurtenances thereto belonging, unto him, the said Howard F. Christy, & to his heirs and assigns forever. This allotment exceeds said Howard F. Christy's due portion of the lands divided by twenty-five dollars eighty-six cents, which may be adjusted by the proceeds of sale.

To Mrs. Harriet M. Dean the said commissioners assign and allot as follows, viz: One lot or parcel of ground situated in the city of St. Louis, in the said seventy-arpent tract, being lot numbered ten on said map marked A, and bounded as follows: north by an extension of Morgan street, east by lot numbered eight upon said
85 map, south by the St. Charles road, and west by Fourteenth street as laid down upon said map, said lot being one hundred and eighty-eight feet in front on St. Charles road by three hundred and nine feet three inches in depth; also one other lot, being a part of said seventy-arpent tract and numbered fourteen upon said map marked A, and bounded as follows: north by an extension of Morgan street, east by lot numbered twelve upon said map, south by the St. Charles road, and west by a street laid down upon said map as Fifteenth street, said lot being one hundred and eighty-eight feet front upon St. Charles road by three hundred and nine feet three inches in depth; also one other lot, being a part of said seventy-arpent tract and numbered twenty on said map, bounded as follows: north by an extension of Morgan street, east by a street laid down upon said map as Sixteenth street, south by the St. Charles road, and west by lot numbered twenty-two on said map, said lot being one hundred and eighty-eight feet in front on said Morgan street by three hundred and nine feet three inches in depth; also one other lot, being a part of said seventy-arpent tract and numbered twenty-two upon said map marked "A," bounded as follows: north by an extension of Morgan street, east by a lot numbered twenty upon said map, south by the St. Charles road, and west by a street laid down upon said map as Seventeenth street, said lot being one hundred and eighty-eight feet front on said Morgan street by three hundred and nine feet three inches in depth; also one other lot, being a part of said seventy-arpent tract, numbered thirty-seven upon said map marked A, bounded as follows: north by Franklin avenue, east by lot numbered thirty-five on said map, south by an extension of Morgan street, and west by a street laid out upon said map as Twenty-first street, being one hundred and eighty feet in front on Franklin avenue by three hundred and nine feet three

inches in depth; also one other lot in North St. Louis, so called,
in block eighteen, numbered seventy-seven upon said map
86 marked B, bounded as follows: north by lot numbered upon
said map seventy-eight, east by street eighty feet wide, as appears by map B, south by lot numbered seventy-six on said map, and west by Second street as laid down upon said map, said lot being eighty feet front on said Second street and extending back to said street eighty feet wide; also one other lot in said street eighty feet wide; also one other lot in said North St. Louis, in block numbered thirty-six upon said map marked B and numbered eighty-four upon said map, and bounded as follows: north by lot numbered eighty-three, east by a street laid down upon said map as Second street, south by a street laid down upon said map as Warren street, and west by lot numbered one hundred and thirty-three upon said map, and said lot being eighty feet front upon said Second street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block thirty-two upon map marked B, numbered ninety-four upon said map, and bounded as follows: north by a street laid down upon said map as Washington street, east by a street laid down upon said map as Second street, south by a lot numbered ninety-five, and west by lot numbered one hundred and twenty-three upon said map, said lot being eighty foot front upon said Second street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block numbered thirty-six upon said map marked B and numbered one hundred and thirty-five upon said map, and bounded as follows: north by a street laid down upon said map as Montgomery street, east by a lot numbered eighty-two upon said map, south by lot numbered one hundred and thirty-four upon said map, and west by a street laid down upon said map as Third street, said lot being eighty feet in front upon said Third street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block numbered forty-five and numbered one hundred and eighty-nine upon said map marked B, bounded as follows: north by the lot numbered upon said map one hundred and ninety,
east by lot numbered one hundred and forty-six, south by
87 lot numbered upon said map one hundred and eighty-eight,
and west by a street laid down upon said map as Fourth street, said lot being eighty feet front on said Fourth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block numbered forty-four upon said map marked B and numbered one hundred and ninety-two, and bounded as follows: north by lot numbered one hundred and ninety-three, east by lot numbered one hundred and forty-three, south by lot numbered one hundred and ninety one upon said map, and west by a street laid down upon said map as Fourth street, said lot being eighty feet in front upon said Fourth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block sixty-one upon said map marked B and number two hundred upon said map, bounded as follows: north by a street laid down upon said map as Montgomery street, east by a street laid down upon said map as Fourth street, south by a lot numbered two hundred and one upon

said map, and west by a lot numbered two hundred and fifty upon said map, said lot being eighty feet in front upon said Fourth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block sixty-one and numbered two hundred and one upon said map marked B, bounded as follows: north by lot numbered two hundred upon said map, east by a street laid down upon said map as Fourth street, south by a lot numbered two hundred and two upon said map, and west by lot numbered two hundred and forty-nine upon said map, said lot being eighty feet in front on said Fourth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block sixty-eight, numbered two hundred and fifty-eight upon said map marked B, bounded as follows: north by lot numbered two hundred and fifty-seven upon said map, east by a street laid down upon said map as Fifth street, south by a lot numbered four hundred and fifty-nine, and west by a street laid down upon said map as Sixth street, said lot being eighty feet front on said Fifth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis
88 numbered upon said map marked B two hundred and eighty-five, bounded as follows: west by lot numbered two hundred and ninety upon sa d map, north by a street laid down upon said map as Green street, east by a street laid down upon said map as Sixth street, and south by a street laid down upon said map surrounding public grounds, said lot being one hundred and fifty feet upon said Green — and running back to said *to said* street surrounding the public grounds; also one other lot in said North St. Louis numbered two hundred and eighty-six upon said map marked B, bounded as follows: north by a street laid down upon said map surrounding the public grounds, east by a street laid down upon said map as Sixth street, south by a street laid down upon said map as Green street, and west by lot numbered two hundred and eighty-nine upon said map, said lot being one hundred and fifty feet upon said Green street and running back the same width to the street surrounding the public grounds; also one other lot in said North St. Louis, in block seventeen and numbered three hundred and eight upon said map marked B, bounded as follows: north by lot numbered three hundred and seven upon said map, east by a street laid down upon said map as Second street, south by a lot numbered three hundred and nine upon said map, and west by lot numbered three hundred and eleven upon said map, said lot being eighty feet two inches in front on said Second street by one hundred and fifty feet, more or less, in depth; also one other lot in said North St. Louis, in block sixty-three and numbered three hundred and sixty-three upon said map marked B, bounded as follows: north by lot numbered three hundred and sixty-four, east by lot numbered three hundred and sixty, south by lot numbered three hundred and sixty-two upon said map, and west by Fifth street as laid down upon said map, said lot being eighty feet in front upon said Fifth street by one hundred and fifty feet deep; to have and to hold the same, with all rights, privileges, and appurtenances thereto belonging, unto her, the said

Harriet, and to her heirs and assigns forever. This allotment
89 is less than her portion by fourteen dollars and fifty-seven cents, to be adjusted out of the proceeds of sale. To Martha T. Sweringen the said commissioners assign and allot as follows, viz: One lot or parcel of ground situated in the city of St. Louis, in said seventy-arpent tract, and numbered eighteen upon said map A, bounded as follows: north by an extension of Morgan street, east by a lot numbered sixteen upon said map, south by the St. Charles road, and west by a street laid down upon said map as Sixteenth street, said lot being one hundred and eighty-eight feet in front on Morgan street by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered twenty-seven upon said map marked A, and bounded as follows: north by Franklin avenue, east by a street laid down upon said map as Eighteenth street, south by an extension of Morgan street, and west by lot numbered twenty-nine upon said map, said lot being — feet in front upon said Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered forty-two upon said map marked A, bounded as follows: north by an extension of Morgan street, east by lot numbered forty, south by St. Charles —, and west by a street laid out upon said map as Twenty-second street, said lot being one hundred and eighty-eight feet in front upon said Morgan street by three hundred and nine feet three inches in depth; also one other lot on said seventy-arpent tract, numbered forty-five upon said map marked A, bounded as follows: north by Franklin avenue, east by lot numbered forty-three upon said map, south by an extension of Morgan street, and west by a street laid down upon said map as Twenty-third street, said lot being one hundred and eighty-eight feet in front upon Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in North St. Louis, so called, in block thirty-six, and numbered one hundred and thirty-three upon said map marked B, bounded as follows: north by lot
90 numbered one hundred and thirty-four upon said map, east by lot numbered eighty-four upon said map, south by a street laid down upon said map as Warren street, and west by a street laid down on said map as Third street, said lot being eighty feet front upon said Third street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block forty-four, numbered one hundred and forty-four upon said map marked B, and bounded as follows: north by lot numbered one hundred and forty-three upon said map, east by a street laid down upon said map as Third street, south by a street laid down upon said map as Warren street, and west by lot numbered one hundred and ninety-one upon said map, said lot being eighty feet in front upon said Third street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block sixty, and numbered two hundred and forty-six upon said map marked B, and bounded as follows: north by lot numbered two hundred and forty-seven upon said map, east by lot numbered two hundred and four upon said map, south by lot numbered two hundred and forty-five upon said map, and west by a

street laid down upon said map as Fifth street, said lot being eighty feet in front upon said Fifth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block sixty-seven, and numbered two hundred and fifty-four upon said map marked B, bounded *as follows: north by a street laid* down upon said map called spring street, east by a street laid down upon said map as Fifth street, south by lot numbered two hundred and fifty-four upon said map, and west by a street laid down upon said map as Sixth street, said lot being eighty feet front on said Sixth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block sixty-seven, and numbered two hundred and fifty-five upon said map marked B, and bounded as follows: north by lot numbered two hundred and fifty-four upon said map, east by street laid down upon said map as Fifth street, south by lot numbered two hundred and fifty-six upon said map, and west by a street laid down upon said map as Sixth street, said lot being
91 eighty feet front upon said Fifth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, numbered two hundred and eighty-nine upon said map marked B, and bounded as follows: north by a street laid down upon said map surrounding the public grounds, east by lot numbered two hundred and eighty-six, south by a street laid down upon said map as Green street, and west by a street laid down upon said map as Seventh street, said lot being one hundred and fifty feet on said Green street and running back to said street surrounding said public grounds the same width; also one other lot in said North St. Louis, in block sixty-six, and numbered three hundred and sixty-seven upon said map marked B, bounded as follows: north by the line of said North St. Louis tract as appears by said map, east by a street laid down upon said map as Fifth street, south by a lot numbered three hundred and sixty-six, and west by a street laid down upon said map as Sixth street, said lot being sixty-three feet front on said Sixth street and running back one hundred and fifty feet to said Fifth street to a width upon said street of forty-six feet ten inches; to have and to hold the same, with all rights, privileges, and appurtenances thereto belonging, unto her, the said Martha T. Sweringen, and to her heirs and assigns forever. This allotment is six dollars fifty-five cents greater in value than her due portion, to be rectified as above mentioned out of proceeds of sales.

To Mary Ann Coxe the said commissioners assign and allot as follows, viz: One lot or parcel of ground situated in the city of St. Louis, in the seventy-arpent tract, numbered twenty-one upon said map marked A, and bounded as follows: north by Franklin avenue, east by lot numbered nineteen upon said map, south by an extension of Morgan street, and west by a street laid — upon said map as Seventeenth street, said lot being one hundred and eighty-eight feet *in* front on Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in the said seventy-arpent tract, num-
92 bered twenty-five upon said map marked A, and bounded as follows: north by Franklin avenue, east by lot numbered twenty-three upon said map, south by an extension of Morgan

street, and west by a street laid down upon said map as Eighteenth street, said lot being one hundred and eighty-eight feet on said Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered thirty-eight upon said map marked A, and bounded as follows: north by an extension of Morgan street, east by lot numbered thirty-six upon said map, south by the St. Charles road, west by a street laid down upon said map as Twenty-first street, said lot being one hundred and eighty-eight feet front on said Morgan street by three hundred and nine feet three inches in depth; also one other lot in said North St. Louis tract, in block thirty-seven, numbered one hundred and thirty-six upon said map marked B, bounded as follows: north by lot numbered one hundred and thirty-seven upon said map, east by lot numbered eighty-one upon said map, south by a street laid out upon said map as Montgomery street, and west by a street laid down upon said map as Third street, said lot being eighty feet in front upon said Third street by one hundred and fifty feet in depth; also one other lot in said North St. Louis tract, in *book* forty-four, numbered one hundred and ninety-three upon said map marked B, and bounded as follows: north by a street laid down upon said map as Montgomery street, east by lot numbered one hundred and forty-two upon said map, south by lot numbered one hundred and ninety-two, and west by a street laid down upon said map as Fourth street, said lot being eighty feet in front upon said Fourth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis tract, in block sixty, numbered two hundred and five upon said map marked B, and bounded as follows: north by lot two hundred and four upon said map, east by a street laid down upon said map as Fourth street, south by a street laid down upon said map as Green street, and west by lot numbered two hundred and
93 forty-five upon said map, said lot being eighty feet in front upon said Fourth street by one hundred and fifty in depth; also one other lot in said North St. Louis tract, in block sixty, numbered two hundred and forty-five upon said map marked B, and bounded as follows: north by lot numbered two hundred and forty-six upon said map, east by lot numbered two hundred and five upon said map, south by a street laid down upon said map as Green street, and west by a street laid down upon said map as Fifth street, said lot being eighty feet front upon said Fifth street by one hundred and fifty feet deep; also one other lot in said North St. Louis tract, in block sixty, numbered two hundred and forty-seven upon said map marked B, and bounded as follows: north by a street laid down upon said map as Warren street, east by a lot numbered two hundred and three upon said map, south by lot numbered two hundred and forty-six upon said map, and west by a street laid down upon said map as Fifth street, said lot being eighty feet in front upon said Fifth street by one hundred and fifty feet in depth; to have and to hold the same unto her, the said Mary Ann Coxe, and to her heirs and assigns forever, as her portion of the lands divided. This allotment is less than her due portion by eight dollars ninety-nine

and two-third cents, to be adjusted in the distribution of the proceeds of the sales of the lands.

To Martha Eliza Mitchell the said commissioners assign and allot for her portion as follows, viz: A lot or parcel of ground situated in the city of St. Louis, in the seventy-arpent tract, numbered seventeen upon said map marked A, and bounded as follows: north by Franklin avenue, east by lot numbered fifteen upon said map, south by an extension of Morgan street, and west by a street laid down upon said map as Sixteenth street, said lot being one hundred and eighty feet in front upon said Franklin avenue by three hundred and nine feet three inches; also one other lot in said seventy-arpent tract, numbered
94 thirty-three upon said map marked A, and bounded as follows: north by Franklin avenue, east by lot numbered thirty-one upon said map, south by an extension of Morgan street, and west by the street laid down upon said map at Twentieth street, said lot being one hundred and eighty-eight feet in front upon Franklin avenue by three hundred nine feet three inches in depth; also one other lot in said seventy-arpent tract and numbered thirty-six upon said map marked "A," and bounded as follows: north by the extension of Morgan street, east by the street laid down upon said map as Twentieth street, south by the St. Charles road, and west by lot numbered thirty-eight upon said map, said lot being one hundred and eighty-eight feet in front upon said extension of Morgan street by three hundred and nine feet three inches in depth; also one other lot in the said North St. Louis tract, in block seven, numbered twenty upon said map marked B, bounded as follows: north by lot numbered twenty-one upon said map, east by the Mississippi river, south by lot numbered nineteen, and west by a street laid down upon said map as Second street, said lot being eighty feet two inches in front upon said Second street, running back two hundred and thirty feet, more or less, to said river; also one other lot in said North St. Louis tract, in block sixty-one, numbered two hundred and fifty upon said map marked B, bounded as follows: north by a street laid down upon said map as Montgomery street, east by lot numbered two hundred upon said map, south by lot numbered two hundred and forty-nine upon said map, and west by a street laid down upon said map as Fifth street, said lot being eighty feet in front upon said Fifth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis tract, in block sixty-six, numbered three hundred and sixty-six upon said map marked B, bounded as follows: north by lot numbered three hundred and sixty-seven, east by a street laid down upon said map as Fifth street, south by lot numbered three hundred and sixty-five,
95 and west by a street laid down upon said map as Sixth street, said lot being eighty feet front upon said Sixth street by one hundred and fifty feet in depth; to have and to hold the said lot of ground, with all rights, privileges, and appurtenances thereto belonging, unto her, the said Martha Eliza Mitchell, and to her heirs and assigns forever, as her portion of the lands divided. This allot-

ment is more by one dollars than her just apportionment, to be adjusted in the distribution of the proceeds of the sale.

To Frances S. M. Wash said commissioners assign and allot as her portion as follows, viz: One lot or parcel of ground situated in the city of St. Louis, in the seventy-arpent tract, being lot numbered sixteen upon said map marked A, bounded as follows: north by an extension of Morgan street, east by a street laid down upon said map as Fifteenth street, south by the St. Charles road, and west by lot numbered eighteen upon said map, said lot being one hundred and eighty-eight feet front upon said extension of Morgan street by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, being lot numbered thirty-one upon said map marked A, bounded as follows: north by Franklin avenue, east by a street laid down upon said map as Nineteenth street, south by an extension of Morgan street, and west by lot numbered thirty-three upon said map, said lot being one hundred and eighty-eight feet in front upon Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, being lot numbered forty-eight upon said map marked A, bounded as follows: north by an extension of Morgan street, east by a street laid down upon said map as Twenty-third street, south by the St. Charles road, and west by the St. Charles road as appears upon said map, said lot being two hundred and sixty-three feet nine inches in front upon said extension of Morgan street and running back three hundred and nine feet three inches to the St. Charles road, with a width upon said road of one hundred and seventy-seven
96 feet two inches; also one other lot in said North St. Louis tract, in block forty-five, numbered one hundred and ninety upon said map marked B, and bounded as follows: north by a street laid down upon said map as Warren street, east by lot numbered one hundred and forty-five upon said map, south by lot numbered one hundred and eighty-nine upon said map, and west by a street laid down upon said map as Fourth street, said lot being eighty feet in front on said Fourth street by one hundred and fifty in depth; also one other lot in said North St. Louis tract, in block sixty-nine, numbered two hundred and sixty upon said map marked B, and bounded as follows: north by a street laid down upon said map as Warren street, east by a street laid down upon said map as Fifth street, south by lot numbered two hundred and sixty-one upon said map, and west by a street laid down upon said map as Sixth street, said lot being eighty feet in front upon said Fifth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis tract, in block sixty-nine, numbered two hundred and sixty-one upon said map marked B, and bounded as follows: north by lot numbered two hundred and sixty upon said map, east by a street laid down upon said map as Fifth street, south by lot numbered two hundred and sixty-two upon said map, and west by a street laid *laid* down upon said map as Sixth street, said lot being eighty feet in front upon said Fifth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, numbered two hundred and ninety upon said map marked B, and bounded as follows:

north by a street laid down upon said map as Green street, east by lot numbered two hundred and eighty-five, south by a street laid down upon said map surrounding the public grounds, and west by a street laid down upon said map as Seventh street, said lot being one hundred and fifty feet in front upon said Green street and running back to the said street surrounding the public grounds; also one other lot in said North St. Louis
97 tract, in block seventeen, numbered three hundred and seven upon said map marked B, and bounded as follows: north by a street laid down upon said map as Wright street, east by a street laid down upon said map as Second street, south by a lot numbered three hundred and eight upon said map, and west by lot numbered three hundred and twelve upon said map, said lot being eighty feet two inches front upon said Second street by one hundred and forty-two feet one inch, more or less, in depth; to have and to hold the same unto the said Francis S. M. Wash & to her heirs and assigns forever as her portion of said lands divided. This allotment is less by sixty-two dollars ninety-nine and two-thirds cents, then due her portion, to be adjusted on the distribution of the proceeds of sales.

To Virginia M. Smith said commissioners assign and allot for her portion as follows, viz: One lot or parcel of ground situated in the city of St. Louis, in the seventy-arpent tract, numbered eight upon said map marked A, and bounded as follows: north by an extension of Morgan street, east by a street laid down upon said map as Thirteenth street, south by the St. Charles road, and west by lot numbered ten upon said map, said lot being one hundred and eighty-eight feet in front upon said Morgan street by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered twelve upon said map marked A, and bounded as follows: north by an extension of Morgan street, south by the St. Charles road, east by a street laid down upon said map as Fourteenth street, and west by lot numbered fourteen upon said map, said lot being one hundred and eighty-eight feet upon said extension of Morgan — by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered nineteen upon said map marked A, and bounded as follows: north by Franklin avenue, east by a street laid down upon said map as Sixteenth street, south by an extension of Morgan street, and west by
98 lot numbered twenty-one upon said map, said lot being one hundred and eighty-eight feet front upon Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered twenty-six upon said map marked A, and bounded as follows: north by an extension of Morgan street, east by lot twenty-four upon said map, south by St. Charles road, and west by a street laid down upon said map as Eighteenth street, said lot being one hundred and eighty-eight feet in front upon said extension of Morgan street by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, being numbered thirty-nine upon said map marked A, bounded as follows: north by Franklin avenue, east by Twenty-first

street as laid down upon said map, south by an extension of Morgan street, and west by lot numbered forty-one upon said map, said lot being one hundred and eighty-eight feet in front upon said Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered forty upon said map marked A, bounded as follows: north by an extension of Morgan street, east by a street laid down upon said map as Twenty-first street, south by the St. Charles road, and west by lot numbered forty-two upon said map, said lot being one hundred and eighty-eight feet front upon said extension of Morgan street by three hundred and nine feet three inches in depth; also one other lot in said seventy-arpent tract, numbered forty-three upon said map marked A, and bounded as follows: north by Franklin avenue, east by Twenty-second street, south by an extension of Morgan street, and west by lot numbered forty-five upon said map, said lot being one hundred and eighty-eight feet in front upon said Franklin avenue by three hundred and nine feet three inches in depth; also one other lot in said North St. Louis tract, in block twenty-one upon said map marked B, numbered sixty-nine upon said map, and bounded as follows: north by a street laid
99 down upon said map as Green street, east by lot numbered twenty-eight upon said map, south by lot numbered sixty-eight upon said map, and west by Second street as laid down upon said map, said lot being eighty feet in front upon said Second street by one hundred and fifty feet in depth; also one other lot in said North St. Louis tract, in block nineteen, numbered seventy-four upon said map marked B, and bounded as follows: north by lot numbered seventy-five upon said map, east by a street laid down upon said map eighty feet wide, south by lot numbered seventy-three upon said map, and west by a street laid down upon said map as Second street, said lot being eighty feet eight inches in front upon said street eighty feet wide and running back to said Second street; also one *another* lot in said North St. Louis tract, in block thirty-seven, numbered seventy-nine upon said map marked B, and bounded as follows: west by lot numbered one hundred and thirty-eight, north by street laid down upon said map as Spring street, east by a street laid down upon said map as Second street, and south by lot numbered eighty upon said map, said lot being eighty feet in front upon said Second street by one hundred and fifty feet in depth, & also one other lot in said North St. Louis tract, in block thirty-two, numbered ninety-six upon said map B, and bounded as follows: north by lot numbered ninety-five upon said map, east by a street laid down upon said map as Second street, south by a street laid down upon said map as Jefferson street, and west by lot numbered one hundred and twenty-one, said lot being eighty feet front upon said Second street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block forty-five, numbered one hundred and forty-five upon said map marked B, and bounded as follows: north by a street laid down upon said map as Warren street, east by a street laid down upon said map as Third street, south by lot numbered one hundred and forty-

two, and west by lot numbered one hundred and ninety upon said map, said lot being eighty feet in front upon said Third street by
100 one hundred and fifty feet in depth; also one other lot in said North St. Louis tract, in block forty-five, numbered one hundred and forty-seven upon said map marked B, bounded as follows: north by lot numbered one hundred and forty-six upon said map, east by a street laid down upon said map as Third street, south by a street laid — upon said map as Green street, and west by lot numbered one hundred and eighty-eight upon said map, said lot being eighty feet in front upon said Third street by one hundred and fifty feet in depth; also one other lot in said North St. Louis tract, in block sixty-eight, numbered two hundred and fifty-seven upon said map marked B, and bounded as follows: north by a street laid down upon said map as Montgomery street, east by a street laid down upon said map as Fifth street, south by lot numbered two hundred and fifty-eight upon said map, and west by a street laid down upon said map as Sixth street, said lot being eighty feet in front upon said Fifth street by one hundred and fifty feet in depth; also one other lot in said North — tract, numbered two hundred and eighty-seven upon said map marked B, and bounded as follows: north by a street laid down upon said map as Montgomery street, east by a street laid down upon said *street east by a street laid down upon said* map as Sixth street, south by a street surrounding grounds appropriated for a church, as appears from said map, and west by lot numbered two hundred and eighty-eight, said lot being one hundred and fifty feet front upon said Montgomery street and running back to said street surrounding grounds appropriated for a church; also one other lot in said North St. Louis tract, numbered two hundred and eighty-eight upon said map marked B, and bounded as follows: north by a street laid down upon said map as Montgomery street, east by lot numbered two hundred and eighty-seven upon said map, south by a street surrounding grounds appropriated for a church, as appears upon said map, and west by a street laid down upon said map as Seventh street, said lot being one hundred and fifty feet in front upon said Montgomery street and
101 running back to a street surrounding said grounds appropriated for a church; also one other lot in said North St. Louis, in block seventeen, numbered three hundred and ten upon said map marked B, and bounded as follows: north by lot numbered three hundred and eleven upon said map, east by lot numbered three hundred and nine upon said map, south by a street laid down upon said map as Spring street, and west by a street laid down upon said map as Third street, said lot being eighty feet front upon said Third street by one hundred and fifty feet in depth; also one other lot in said North St. Louis, in block seventeen, numbered three hundred and eleven upon said map marked B, and bounded as follows: north by lot numbered three hundred and twelve upon said map, east by lot numbered three hundred and eight upon said map, south by lot three hundred and ten upon said map, and west by a street laid down upon said map as Third street, said lot being eighty feet in front upon said Third street by one hundred and fifty feet in depth; also one other lot of ground in said North St. Louis tract, in block

sixty-three, numbered three hundred and sixty-one upon said map marked B, and bounded as follows: north by lot numbered three hundred and sixty upon said map, east by a street laid down upon said map as Fourth street, south by a street laid down upon said map as Spring street, and west by lot numbered three hundred and sixty-two upon said map, said lot being eighty feet in front upon said Fourth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis tract, in block sixty-three, and numbered three hundred and sixty-two upon said map marked B, bounded as follows: north by lot three hundred and sixty-three upon said map, east by lot numbered three hundred and sixty-one upon said map, south by a street laid down upon said map as Spring street, and west by a street laid down upon said map as Fifth street, said lot being eighty feet in front upon said Fifth street by one hundred and fifty feet in depth; also one other lot in said North St. Louis tract, in block sixty-three, and numbered three
102 hundred and sixty-four upon said map marked B, and bounded as follows: north by the northern line of said tract and a street laid down upon said map as Wright street, south by lot numbered three hundred and sixty three upon said map, east by lot numbered three hundred and fifty-nine upon said map, and west by a street laid down upon said map as Fifth street and the line of said tract, said lot being thirty-eight feet four inches in front upon said Fifth street and running back one hundred and fifty feet in an irregular manner to a width of eighty feet upon said lot numbered three hundred and fifty-nine upon said map; also a lot of ground lying in St. Louis, fronting northwardly upon Franklin avenue twenty-five feet, including the easternmost tenement of the long brick row at the intersection of Fifth street and Franklin avenue, said lot running back southwardly about one hundred and eight feet, bounded west by the fourth tenement in said row, east by lots of N. P. Taylor and James Dean, and north by said Franklin avenue; to have and to hold the same, with all the rights, privileges, and appurtenances thereto belonging, unto her, the said Virginia M. Smith, and to her heirs and assigns forever. This allotment is less by nine dollars ninety-nine cents than her just portion, to be adjusted on distribution of the proceeds of sales of land; and the said commissioners further report the said tract of fifty arpents lying in St. Louis county, being a part of a larger tract granted by concession to Antoine Vincent Bouis, is so situated that it cannot be divided among the said heirs of Christy without prejudice to the owners thereof nor can they make partition without prejudice to the owners thereof of all that portion of the North St. Louis tract which is designated on the said map accompanying his report marked B as lying between the most northern fifty-foot street and Stoney creek, it being the land embraced in outlot number nine and now divided into several parcels by streets as laid out on said map.

103 They therefore recommend the sale of the same and distribution of the proceeds.

JOS. C. BROWN.
JESSE G. LINDELL.
WM. GLASGOW.
D. DELANEY.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twenty-ninth day of October, eighteen hundred and forty-one, before me, the undersigned, clerk of the circuit court within and for the county aforesaid, came Joseph C. Brown, Jesse G. Lindell, and William Glasgow, who are all known to me to be the real persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at office, in the city of St. Louis, the day and year last aforesaid.

JOHN RULAND, *Clerk*,
By N. S. DOUGHTY, *Dep'ty Clk.*

Map A referred to in the foregoing report.

(Here follow maps marked pp. 103 & 104.)

105 And the court doth order and decree that the petition made therein be firm, valid, and effectual forever, and that the said lands and lots of ground mentioned in the several portion- and allotments in said report pass to and vest in fee-simple in the persons respectively to whom they are in said report allotted, according to the tenor of said report.

And the said commissioners having in their report set forth that the tract of land in bill mentioned, containing fifty arpents, lying in St. Louis county, being part of a larger tract granted by concession to Antoine Vincent Bouis, conveyed to William Christy by deeds of Marie V. Bouis and Andre V. Bouis and others, dated, one of them, the nineteenth of April, the other dated the twenty-second of April, in the year eighteen hundred and sixteen, bounded as follows: beginning at a stake on the River Gingrass, a corner of said tract, thence up the said River Gingrass, with its meanders, to a certain point, and thence eastwardly, in a parallel line with the eastward line of Hyacinth St. Cyr's tract, to the southward line of the tract of said grantors, and thence south forty-eight degrees west, with said line, to the beginning, so as to include the quantity of fifty arpents, is so situated that it cannot be divided among the heirs of said William Christy without prejudice to the owners thereof, and, further, that they could not make partition, without prejudice to the owners thereof, of all that portion of the North St. Louis tract which is designated on the said map accompanying said report, marked B, as lying between the most northern fifty-foot street and Stoney creek, it being the land embraced in outlot number nine and divided into several parcels by streets as laid out on said map, and said commissioners having recommended that said tract of fifty arpents and said portion of the North St. Louis tract lying between the most north-

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ern fifty-foot street, according to said map B, and Stoney creek, which is subdivided by streets laid out by the said
106 commissioners into three irregular pieces *to* be sold & the proceeds thereof be distributed among the parties entitled thereto, the court, being satisfied with the correctness of the report of said commissioners in this respect, doth order and decree that the sheriff of St. Louis county proceed to make sale of said lands in this order above mentioned and described, giving notice of such sale, making the same in all respects in the same manner as he is required by law to do in making sale of real estate on executions, which sale shall be made one-fourth cash down and the balance in three equal portions, payable at six, twelve, and eighteen months, with notes and deeds of trust to secure the payment of the portion of the purchase-money for which a credit shall be given.

And the sheriff is ordered to make report to this court of his proceedings hereunder.

It is ordered that all the costs accrued in this case or to accrue in consequence of the exceptions to the report of the commissioners be paid by the parties who made the exceptions.

Mr. ALLEN: I desire to make the same objection to the decree and also to this plat.

The court was here shown the plat.

Mr. DRABELLE: What is this plat?

Mr. JOHNSON: It is referred to in the commissioners report. This plat is described all the way through the partition proceedings, even in the deed after the plat was made, and after that plat was made it has been referred to as lot # 9.

Mr. ALLEN: To that we enter the same objection; and, further, that plat is not filed and is not authenticated in any manner.

Mr. JOHNSON: It is part of the papers in the case.

Mr. POLLARD: What plat is that? What do you call that?

Mr. JOHNSON: It is marked in the proceedings as plat # 2.

COURT: Objection overruled.

To which ruling defendants duly excepted.

107 Mr. JOHNSON: I next offer in evidence, your honor, the report of the sale by the sheriff and plat marked C, called for in it, showing this lot, and the confirmation of that report, which is to be found in the same record, # 2, page 259, confirming the sale of these lots # 33 and 34 to Judge Robert Wash and lot # 35 to the trustee of the plaintiff in this case, Martha J. Sweringen.

COURT: How is that?

Mr. JOHNSON: The report of the sale; plat and the confirmation. I offer the report of sale by the sheriff and plat C and confirmation of that report, showing he had sold lots # 33 and 34 to Robert Wash and lot 35 to Martha J. Sweringen's trustee.

COURT: Lot # 35 to Martha J. Sweringen's trustee?

A Mr. JOHNSON: Yes.

Mr. DRABELLE: Was not lot 33 to James Sweringen and lots 34 and 35 to Robert Wash?

Mr. JOHNSON: Possibly I have made a mistake.

To which evidence defendants made the same objections as before. Objection overruled. Defendants duly excepted to the ruling of the court.

Said report, plat C, and order confirming sale were read and are as follows:

In the St. Louis Circuit Court, April Term, 1843.

HOWARD F. CHRISTY ET AL.
vs.
JAMES T. SWERINGEN ET AL., Heirs of William Christy, Dec'd. } In Partition.

William Willburn, sheriff of the county of Saint Louis, State of Missouri, comes here into court and makes report of all his acts and proceedings in the above cause under the order of this court ordering me, the said sheriff, to sell certain real estate described in said order.

108 In pursuance of said order (a copy whereof is hereto annexed, marked A, and made part of this report) I, the said sheriff, did, on the ninth day of May, in the year of our Lord one thousand eight hundred and forty-three, cause to be published in the St. Louis New Era (a newspaper published in said county of St. Louis) an advertisement of the sale of said real estate according to the provisions of the statute in such case made and provided, a copy of which said advertisement marked B is hereto annexed and made part of this report. Agreeably to said advertisement I, the said sheriff, did, on the 30th day of May, in the year of our Lord one thousand eight hundred and forty-three, at the court-house door in the city of St. Louis, between the hours of nine and five o'clock of that day, proceed to sell the said real estate at public auction to the highest bidder on the terms in said order mentioned, at which time and place, Henry Ginlen being the highest and best bidder for the tract of land described in said order, at the price and sum of six dollars and fifty cents per arpent, amounting to the sum of three hundred and twenty-five dollars, the said tract was therefore stricken off and sold to the said Henry Guinler for that sum.

And having previous to the said day of sale caused the remaining portion of the real estate described in said order to be subdivided and laid out into lots of convenient sizes, numbered from one to thirty-seven, according to the plat thereof hereto annexed, C, and made part of this report, I did, at said time and place, cause the said lots so laid out by me, as aforesaid, to be sold at public vendue to the highest bidder on the terms in said order mentioned, each lot being sold separate, at which time and place the persons whose names are set opposite to the number of each lot in the schedule hereto annexed, marked D, and made part of this report, being the highest and last bidders for each of said lots at the prices and sums extended in said schedule opposite to each name, the said

109 lots were therefor- each stricken off and sold to said persons for said sums.

And the said Henry Guinlen and all of said persons mentioned in said schedule have complied with the terms of said sale by paying into my hands in cash one-fourth of the purchase-money.

All of which is respectfully submitted to this honorable court.

WILLIAM MILBURN,
Sheriff of the County of St. Louis, in the State of Missouri,
H.

St. Louis, 3 July, 1843.

SCHEDULE.

No. of lot.	No. of feet.	Name of purchasers.	Price per foot.	Total amount.
No. 1	Whole lot.	Nathaniel P. Taylor	.....	$50 00
" 2	70	William Chambers	$2 62½	183 75
" 3	30	Christian Balmer	3 75	112 50
" 4	30	Ernst Balmer	2 25	67 50
" 5	30	James Stockdale	2 25	67 50
" 6	30	John Lowe	2 62½	78 75
" 7	30	John Lowe	5 37½	161 25
" 8	30	John Lowe	4 00	120 00
" 9	30	John Lowe	3 87½	116 25
" 10	30	Frederick Probst	3 00	90 00
" 11	30	James T. Sweringen for Martha J. Sweringen	3 00	90 00
" 12	30	Jacob Bittner	1 75	52 50
" 13	30	Joseph Scholl	2 12½	63 75
" 14	30	John Th. Walter	1 75	52 50
" 15	39	John Th. Walter	1 62½	48 75
" 16	30	William Chambers	1 62½	48 75
" 17	30	Robert Wash	1 75	52 50
" 18	71	James T. Sweringen for Martha J. Sweringen	4 00	284 00
" 19	Whole lot.	James T. Sweringen for Martha J. Sweringen	.....	108 00
" 20	30	Reuben B. Austin	5 75	172 50
" 21	30	Reuben B. Austin	3 12½	93 75
" 22	30	Reuben B. Austin	3 12½	93 75
" 23	30	Reuben B. Austin	2 75	82 50
" 24	30	James T. Sweringen for Martha J. Sweringen	2 25	67 50
" 25	30	Same, same	2 12½	63 75
" 26	30	Same, same	2 12½	63 75
" 27	30	Same, same	2 50	75 00
" 28	30	William Chambers	3 25	97 50
" 29	64	William Chambers	3 87½	248 00
" 30	.....	William Chambers, whole lot	.....	175 00
" 31	30	William Chambers	3 75	112 50
" 32	30	William Chambers	3 75	112 50
" 33	30	James T. Sweringen for Martha J. Sweringen	3 50	105 00
" 34	30	Robert Wash	3 75	112 50
" 35	30	Robert Wash	3 75	112 50
" 36	30	Harriet M. Dean	4 12½	123 75
" 37	30	Harriet M. Dean	5 50	165 00
				$3,925 00

110 STATE OF MISSOURI, } *sct:*
County of St. Louis, }

In the St. Louis Circuit Court, November Term, 1842, Friday, January 6th, 1843.

Extract from the Decree in the Case of Howard F. Christy et al. vs. James T. Sweringen et al.

And the said commissioners having in their report set forth that the tract of land in bill mentioned, containing fifty arpents, lying in St. Louis county, being part of a larger tract granted by concession to Antoine Vincent Bouis, conveyed to William Christy by deeds of Maria V. Bouis and others, dated, one of them, the nineteenth of April, the other dated the twenty-second of April, in the year eighteen hundred and sixteen, bounded as follows: Beginning at a stake in the River Gingrass, a corner of said tract, thence up the said River Gingrass, with its meanders, to a certain point, and thence eastwardly, in a parallel line with the eastward line of Hyacinth St. Cyr's tract, to the southward line of the tract of said grantors, and thence south forty-eight degrees west with said line to the beginning, so as to include the quantity of fifty arpents, is so situated that it cannot be divided among the heirs of William Christy without prejudice to the owner thereof; and, further, that they could not make partition without prejudice to the owners thereof of all that portion of the North St. Louis tract which is designated on the said map accompanying said report marked B as lying between the most northern fifty-foot street and Stoney creek, it being the land embraced in outlot number nine and divided into several parcels by streets as laid out on said map; and said commissioners having recommended that said tract of fifty arpents and said portion of the North St. Louis tract lying between the most northern fifty-foot street, according to said map B, and Stoney creek, which is
111 subdivided by streets laid out by the said commissioners into three irregular pieces, be sold & the proceeds thereof be distributed among the parties entitled thereto, the court, being satisfied with the correctness of the report of said commissioners in this respect, doth order & decree that the sheriff of St. Louis county proceed to make sale of said lands in the order above mentioned and described, giving notice of such sale & making the same in all respects in the same manner as he is required by law to do in making sale of real estate on executions, which sale shall be made one-fourth cash down and the balance in three equal portions, payable at six, twelve, and eighteen months, with notes and deeds of trust to secure the payment of the portion of the purchase-money for which a credit shall be given; and the sheriff is ordered to make report to this court of his proceedings hereunder.

True extract.
Test: JNO. RULAND, *Clerk.*

(Here follows map marked p. 111.)

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112 MONDAY, *July* 17, 1843.

HOWARD F. CHRISTY, &c.,
vs.
JAMES T. SWERINGEN, &c.

The sheriff having heretofore filed his report herein stating the land sold, the prices paid for the *d*ame, together with the names of the purchasers, it is ordered by the court that said report and the matters and things therein contained be and the same is confirmed as firm and effectual forever. It is further ordered that said sheriff execute deeds to the purchasers herein.

It is ordered that Joseph Spaulding be and he is allowed the sum of two hundred and fifty dollars fees for conducting the said proceedings in partition as counsel, which sum the sheriff is ordered to pay out of the proceeds of sales herein.

It is ordered that the clerk of this court make out a copy of the decree of partition herein, under seal, and cause the same to be recorded in the recorder's office of St. Louis county, the expenses of which are also to be paid by the sheriff out of proceeds of sales in this case.

It is further ordered that the sheriff pay out of the proceeds of sales in his hands and to come into his hands, first, the costs and expenses of this case, and then to the following persons the several sums, namely: Matilda N. Taylor, one hundred three dollars eighty-eight cents; to Howard F. Christy, fifty-seven dollars sixty-five cents: to Harriet M. Dean, ninety-eight dollars eight cents; to Martha T. Sweringen, wife of James T. Sweringen, seventy-six dollars ninety-six cents; to Mary Ann Coxe, wife of Henry J. Coxe, ninety-two dollars fifty cents; to Martha E. Mitchell, wife of David D. Mitchell, eighty-two dollars fifty-one cents; to Frances S. M. Wash, one hundred forty-six dollars fifty cents, and to Virginia M. Smith, wife of Edwin B. Smith, ninety-three dollars fifty cents; which several payments will rectify the several excesses and deficiencies in the allotments made by the commissioners in this
113 cause, so that all the parties will be equally advanced. It is further ordered that the balance of proceeds of said sales, after the payments aforesaid, shall be paid over to the parties in interest according to their respective rights as heretofore ascertained by the court.

Q. I will now offer the copy of the sheriff's deed to Robert Wash. That will straighten that out.

Mr. ALLEN: To the last we also enter the same objection.

The objection was overruled; to which ruling the defendant duly excepted.

Mr. JOHNSON: This is a very long deed and makes a great many recitals. This refers to reports and plats and designates specifically the property—the deed to Robert Wash for lots 34 and 35. I was mistaken. Correct that.

Said deed was read and is as follows:

To all to whom these presents shall come, I, William Milburn, sheriff of the county of St. Louis, State of Missouri, send greeting:

Whereas on the sixth day of January in the year of our Lord one thousand eight hundred and forty-three an order was made by the St. Louis circuit court sitting as a court of chancery for the sale of certain real estate mentioned in the report of the commissioners appointed by said court to make partition of the estate of Wm. Christy, deceased, as being so situated that it could not be divided among the heirs of said William Christy without prejudice to the owners thereof which said order is in words and figures following, to wit:

STATE OF MISSOURI, } *sct:*
County of St. Louis, }

In the St. Louis Circuit Court, November Term, 1842, Friday, January 6th, 1843.

Extract from the Decree in the Case of Howard F. Christy et al. vs. James T. Sweringen et al.

And the said commissioners having in their report set forth that the tract of land in bill mentioned, containing fifty arpents, lying in St. Louis county, being part of a larger tract granted by 114 concession to Antoine Vincent Bouis conveyed to William Christy by deed of Marie V. Bouis and Andre V. Bouis and others dated one of them the nineteenth of April the other dated the twenty-second of April in the year eighteen hundred and sixteen bounded as follows beginning at a stake on the River Gingrass a corner of said tract thence up the said Ricer Gingrass with its meanders to a certain point and thence eastwardly in a parallel line with the eastward line of Hyacinth St. Cyr's tract to the southward line of the tract of said grantors and thence south forty-eight degrees west with said line to the beginning so as to include the quantity of fifty arpents is so situated that it cannot be divided among the heirs of said William Christy without prejudice to the owners thereof and further that they could not make partition without prejudice to the owners thereof of all that portion of the North St. Louis tract which is designated on the said map accompanying said report marked B, as lying between the most northern fifty-foot street and Stoney creek it being the land embraced in outlot number nine and divided into several parcels by streets as laid out on said map and said commissioners having recommended that said tract of fifty arpens and said portion of the North St. Louis tract lying between the most northern fifty-foot street according to said map B, and Stoney creek, which is subdivided by streets laid out by the said commissioners into three irregular pieces be sold the proceeds thereof be distributed among the parties entitled thereto the court being satisfied with the correctness of the report of said commissioners in this respect doth order and decree that the sheriff of St. Louis county proceed to make sale of said lands in this order above mentioned and described giv-

ing notice of such sale and making the same in all respects in the same manner as he is required by law to do in making sale of real estate on executions which sale shall be made one-fourth cash down and the balance in three equal portions payable at six, twelve and eighteen months with notes and deeds of trust to secure the
115 payment of the purchase-money for which a credit shall be given and the sheriff is ordered to make a report to this court of his proceedings hereunder.

True extract.
Test: JOHN RULAND, *Clerk.*

And whereas, in pursuance of which said order I the said sheriff did proceed to give notice for at least twenty days previous to the day of sale hereinafter mentioned of the time, terms and place of sale and of the real estate to be sold and where situated as the law directs by advertisements in the St. Louis New Era a newspaper printed in said county of St. Louis a copy of which said advertisement is hereby annexed and makes part of this deed. And whereas, I the said sheriff did previous to the said day of sale, mentioned in said advertisement, cause that portion of the property described in said advertisement and order as all that portion of the North St. Louis tract, which is designated on the map accompanying the report of said commissioners marked B as lying between the most northern fifty-foot street in North St. Louis and Stoney creek to be subdivided and laid out into smaller lots as represented on the map marked C, and filed with my report made to the St. Louis circuit court on the 3rd day of July eighteen hundred and forty-three a copy of which said map is also filed in the office of the recorder of deeds for said county of Saint Louis by order of the said St. Louis circuit court by virtue of which said order of sale and of said advertisement I the said sheriff did on the thirtieth day of May in the year of our Lord one thousand eight hundred and forty-three between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day agreeably to said advertisement at the court-house door in the city of St. Louis during the April term of the circuit court of St. Louis county for the year one thousand and eight hundred and forty-three expose to sale at public auction to the highest bidder on the terms in said order mentioned all
116 the right, title, interest, claim, estate and property of Martha Eliza Berry, Frances S. M. Wash, Harriet B. M. Dean, Nathaniel P. Taylor & Matilda M. Taylor his wife Martha T. Christy, Edmund B. Smith, and Virginia M. Smith his wife, Henry S. Coxe and Mary Ann his wife Howard F. Christy, Edmund T. Christy, James T. Sweringen and Matilda J. Sweringen his wife and Mary Ann Wright heirs of William Christy deceased of in and to those portions of the said North St. Louis tract which are designated on the said map filed with my said report as lots numbers seventeen, thirty-four and thirty-five said lots are bounded and described on said map as follows, to wit: Lot number seventeen, containing thirty feet front on Second or Main street and running back west to Stoney creek bound- east by said Second or Main street north by lot

No. 18, south by lot No. 16 and west by Stoney creek. Said lots Nos. 34 & 35 containing each thirty feet front on the River Mississippi and running back westwardly one hundred and thirty eight feet more or less, bounded east by the River Mississippi, south by lot No. 36 north by lot No. 33 and west by the east end of lots No. 22 and 23 according to said map and Robert Wash being then and there the highest and last bidder for said lots of ground at the prices and sums following, to wit: for lot number seventeen the price and sum of one dollar and seventy-five cents per foot amounting to the sum of fifty-two dollars and fifty cents and for lots numbers thirty-four and thirty-five the price and sum of three dollars and seventy-five cents per foot each lot and amounting together to the sum of two hundred and twenty-five dollars and all three of said lots amounting to the sum of two hundred and seventy-seven dollars and fifty cents the same were stricken off and sold to the said Robert Wash for that sum. And whereas I the said sheriff did afterwards to wit: on the third day of July in the year of our Lord one thousand eight hundred and forty-three made report of said sale and of all my acts and proceedings under
117 said order to the said St. Louis circuit court which said report was afterwards, to wit, on the seventeenth day of July, A. D. eighteen hundred and forty-three approved by said court, and confirmed as firm and effectual forever and an order thereupon made by said court ordering and directing me the said sheriff to make and execute to the said Robert Wash a deed for said lot of ground. Now, therefore, know ye that I, William Milburn, sheriff as aforesaid in consideration of the premises and of the said sum of two hundred and seventy-seven dollars and fifty cents to me in hand paid in the manner provided in said order by the said Robert Wash the receipt of which I do hereby acknowledge and by virtue of the authority in me vested by law, I do hereby assign, transfer and convey to him the said Robert Wash all the right, title, claim, interest, estate and property of the said heirs of William Christy, deceased and above named of in and to the above-described lots of ground that I might sell and convey as sheriff as aforesaid by virtue of the aforesaid order of sale and of said advertisement.

To have and to hold the same to him the said Robert Wash and to his heirs and assigns forever with all rights, privileges and appurtenances thereunto belonging.

In witness, whereof, I William Milburn, sheriff of the county of St. Louis as aforesaid have hereunto set my hand and seal this thirtieth day of December, A. D. eighteen hundred and forty-three.

WILLIAM MILBURNE, [SEAL.]

Sheriff of St. Louis County, in the State of Missouri.

Sheriff's Sale.

In virtue and by authority of an order made by the St. Louis circuit court at the November term, 1842, of said court on the 6th day of January, 1843, for the sale of certain real estate mentioned and

described in the report of the commissioners appointed by said court to make partition of the real estate of William Christy, deceased, in the case wherein Martha Eliza Berry and Francis S. M. Wash, by Robert Wash, guardian, and Harriet M. B. Dean, Nathaniel P. Taylor,
M. N. Taylor, Martha T. Christy, E. B. Smith, Virginia M.
118 Smith, Henry S. Coxe, Mary Anne Coxe, and Howard F. Christy were plaintiffs and Edward T. Christy, James T. Sweringen, Martha T., his wife, and Mary Ann Wright were defendants, I will, on Tuesday, the 30th day of May inst., between the hours of nine and five o'clock of that day, at the court-house door, in the city of St. Louis, sell all the right, title, interest, claim, estate, and property of the parties above named of, in, and to the real estate mentioned in said order to the highest bidder, on the terms in said order mentioned, to wit, one-fourth cash down and the balance in three equal portions, payable at six, twelve, and eighteen months, with notes and deeds of trust to secure the payment of the portion of the purchase-money for which a credit shall be given; which said real estate is described in said order as follows, to wit: A tract of land containing fifty arpents, lying in St. Louis county, being part of a larger tract granted by concession to Antoine Vincent Bouis, conveyed to William Christy by deeds of Marie V. Bouis and Andre V. Bouis and others, dated, one of them, the nineteenth of April, the other dated the twenty-second of April, in the year eighteen hundred and sixteen, bounded as follows: Beginning at a stake on the River Gingrass, a corner of said tract, thence up the said River Gingrass, with its meanders, to a certain point, and thence eastwardly, in a parallel line with the eastern line of Hyacinth St. Cyr's tract, to the southward line of the tract of the said grantors, and thence south forty-eight degrees west with said line to the beginning, so as to include the quantity of fifty arpents; also all that portion of the North St. Louis tract which is designated on the map accompanying the report of said commissioners, marked B, as lying between the west northern fifty-foot street in North St. Louis and Stoney creek, it being the land embraced in outlot number nine and divided into several parcels by streets as laid out on said map, lying in the county of St. Louis and State of Missouri.

WILLIAM MILBURN, *Sheriff.*

Saint Louis, May 9, 1843.

119 STATE OF MISSOURI, } *ss:*
County of St. Louis, }

In the St. Louis Circuit Court, Thursday, June 19th, 1845, April Term, 1845.

Be it remembered that on this nineteenth day of June, eighteen hundred and forty-five, comes into open court William Milburn, Esquire, sheriff of the county of St. Louis, and acknowledges the execution of a deed by him, as sheriff as aforesaid, in favor of Robert Wash; which said acknowledgment is entered on the records of the court of that day.

In testimony whereof I, John Ruland, clerk of said court, hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, the day and year aforesaid.

[SEAL.]

JOHN RULAND, *Clerk.*

Filed and recorded Dec'r 2, 1846.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by William Christy's heirs, by sheriff, to Robert Wash, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office, in Book E 4, page 205.

In witness whereof I have hereunto set my hand and official seal *at* this 12th day of March, A. D. 1896.

M. D. LEWIS, *Recorder.*

Mr. JOHNSON: All of these deeds call for the Mississippi river on the east.

Mr. JOHNSON: I now offer in evidence the deed from Robert
120 Wash to the trustees of Martha J. Sweringen, dated the 3rd of December, 1850, lot- 17, 34, and 35, marked and designated on plat made by Joseph C. Brown in proceedings of partition among the heirs of William Christy, deceased, of outlot #9, in the county of St. Louis, State of Missouri, being between Rocky branch and the next street, which street runs east and west.

Mr. ALLEN: To that we enter the same objection.

Objection overruled; to which ruling the defendants duly excepted.

Said deed was read and is as follows:

This deed made and entered into the third day of December eighteen hundred and fifty by and between Robert Wash and Eliza L. his wife parties of the first part and John O. F. Farrar and Charles T. Sweringen trustees parties of the second part and Martha Jane Sweringen wife of James T. Sweringen of Saint Louis, Missouri, party of the third part, witnesseth: That said parties of the first part for and in consideration of twelve hundred dollars to them paid by said party of the third part, receipt of which is hereby acknowledged do by these presents, grant, bargain and sell, convey and confirm unto said parties of the second part as trustees as hereinafter mentioned the three lots of land described as follows: Lots numbered seventeen, thirty-four and thirty-five, as marked and designated on a plat made by Joseph C. Brown in the proceedings in partition amongst the heirs of William Christy deceased of the part of outlot No. 9 in the county of Saint Louis and State of Missouri, lying between Rocky branch, and the street next to it south, which street runs east and westwardly which plat is marked C, and will be found

amongst said proceedings in partition in the records of the circuit court for the county of St. Louis. Lot seventeen containing thirty feet front on Main street and running back west to Stoney creek or Rocky branch with that width, lots thirty-four and thirty-five containing each thirty feet in front or width the two together being
121 described as follows: Beginning at a point which is one hundred and forty feet east of said Main street and sixty feet north of said other street, which is the nearest street to said Stoney creek or Rocky branch, south thereof which point of beginning is the southwest corner of lot No. 35 running thence northwardly and parallel to Main street sixty feet, and extending eastwardly with that width of sixty feet and parallel to said street; next south of said Stoney creek or Rocky branch to the Mississippi river. Bounded north by lot No. thirty-three, west by lots No. twenty-two and twenty-three, south by lot No. thirty-six, east by the Mississippi river and are the same three lots acquired by said Robert Wash of the heirs of William Christy by deed executed by the sheriff and recorded in the recorder's office for Saint Louis county, in Book E No. four, page 205; to have and to hold said lots of land with the ways, rights, privileges, appurtenances and advantages thereunto belonging unto said parties of the second part and to the survivor of them and to the heirs and assigns of such survivor forever. In trust however to have, hold, use and enjoy the same for the sole and independent use and profits of said Martha Jane Sweringen free and clear of all interest and control of her husband said lots to be conveyed and used as she in writing may direct. The rents thereof to be collected by the trustees and paid over to her after all costs of the trust taxes &c. It being intended that said Martha Jane Sweringen shall have the full and exclusive ownership and control over said property by means of her said trustees the same as if she were a "*feme sole.*" The profits and rents of said lots, and in case of sale of them the proceeds thereof to be invested by said trustees for said Martha Jane, or otherwise used as she alone may direct.

In testimony whereof said parties of the first part have hereunto set their hands and seals the day and year first above written.

R. WASH. [SEAL.]
E. L. WASH. [SEAL.]

122 STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twenty-second day of January, eighteen hundred and fifty-one, before the undersigned, recorder in and for said county, came Robert Wash and Eliza L., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. She, the said Eliza L., being first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her said husband, that she executed the same and relinquishes her dower in the real estate

therein mentioned freely and without compulsion or undue influence of her said husband.

[SEAL.] Witness my hand and official seal the 22nd day of January, 1851.

STEPHEN D. BARLOW, *Recorder.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder within and for the county aforesaid, do hereby certify that the foregoing instruments of writing was filed for record in my office Jan'y 22nd, 1851, and is truly recorded in Book U No. 5, pages 100.

[SEAL.] Witness my hand and official seal the date last aforesaid.

S. D. BARLOW, *Recorder.*

Mr. JOHNSON: I now offer in evidence a deed of the Christy heirs in partition by sheriff to Martha J. Sweringen's trustees.

Which was read in evidence and is as follows:

To all to whom these presents shall come, I, William Milburn, sheriff of the county of Saint Louis, State of Missouri, send greeting:

Whereas on the sixth day of January in the year of our
123 Lord one thousand eight hundred and forty-three an order was made by the St. Louis circuit court sitting as a court of chancery for the sale of certain real estate mentioned in the report of the commissioners appointed by said court, to make partition of the estate of William Christy, deceased, as being so situated that it could not be divided among the heirs of said William Christy without prejudice to the owners thereof, which said order is in the words and figures following, to wit:

STATE OF MISSOURI, } sct:
County of St. Louis, }

In the St. Louis Circuit Court, November Term, 1842, Friday, January 6th, 1843.

Extract from the Decree in the Case of Howard F. Christy et al. vs. James T. Sweringen et al.

And the said commissioners having in their report set forth that the tract of land in bill mentioned containing fifty arpents lying in St. Louis county, being part of a larger tract granted by concession to Antoine Vincent Bouis conveyed to William Christy by deeds of Maria V. Bouis and Andre V. Bouis and others, dated one of them the nineteenth of April, the other dated the twenty-second of April in the year eighteen hundred and sixteen bounded as follows: Beginning at a stake on the River Gingrass, a corner of said tract, thence up the said River Gingrass with its meanders to a certain point and thence eastwardly in a parallel line with the eastward

line of Hyacinth St. Cyr's tract to the southward line of the tract of said grantor's and thence south forty-eight degrees with said line to the beginning so as to include the quantity of fifty arpents is so situated that it cannot be divided amongst the heirs of said William Christy without prejudice to the owners thereof and further that they could not make partition without prejudice to the owners thereof of all that portion of the North St. Louis tract which is designated on said map accompanying said report marked B as lying between the most northern fifty-foot street, and Stoney creek, it being the land embraced in outlot number nine and divided into several parcels by streets as laid out on said map, and
124 said commissioners having recommended that said tract of fifty arpents, and said portion of the North St. Louis tract lying between the most north fifty-foot street according to said map B and Stoney creek which is subdivided by streets laid out by the said commissioners into three irregular pieces be sold and the proceeds thereof be distributed among the parties entitled thereto. The court being satisfied with the correctness of the report of said commissioners in this respect doth order and decree that the sheriff of St. Louis county proceed to make sale of said lands in said order above mentioned and described giving notice of such sale and making the same in all respects in the same manner as he is required by law to do in making sale of real estate on executions, which sale shall be made one-fourth cash down, and the balance in three equal portions, payable at six, twelve, and eighteen months, with notes and deeds of trust to secure the payment of the portion of the purchase-money for which a credit shall be given and the sheriff is ordered to make report to this court of his proceedings hereunder.

True extract.
Test: JNO. RULAND, *Clerk.*

And whereas in pursuance of said order I the said sheriff did proceed to give notice for of least twenty days previous to the day of sale hereinafter mentioned of the time, terms and place of sale, & of the real estate to be sold and where situated as the law directs, by advertisements in the St. Louis New Era, a newspaper printed in said county of St. Louis, a copy of which said advertisement is hereto annexed & makes a part of this deed. And whereas I the said sheriff did previous to the said day of sale mentioned in said advertisement, cause that portion of the property described in said advertisement order, as all that portion of the North St. Louis tract which is designated on the map, accompanying the report of said commissioners marked B, as lying between the most northern fifty-foot street in North St. Louis and Stoney creek, to be subdivided and laid out into smaller lots as represented on the map marked C and filed with my report made to the St. Louis
125 circuit court on the third day of July, eighteen hundred and forty-three. A copy of which said map is also by order of said court filed in the office of the recorder of deeds for said county of St. Louis.

By virtue of which said order of sale and of said advertisement,

I the said sheriff did on the thirtieth day of May in the year of our Lord one thousand eight hundred and forty-three, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, agreeably to said advertisement at the court-house door in the city of St. Louis during the April term of the circuit court of St. Louis county for the year one thousand eight hundred and forty-three expose to sale at public vendue or auction to the highest bidder, at the terms in said order mentioned, all the right, title, interest, claim, estate and property of Martha Eliza Berry, Frances S. M. Wash, Harriet M. B. Dean, Nathaniel P. Taylor, and Matilda N. Taylor his wife, Martha T. Christy, Edmund B. Smith, and Virginia M. Smith his wife, Henry S. Coxe and Mary Ann Coxe his wife, Howard F. Christy, Edmund T. Christy, James T. Sweringen and Martha J. Sweringen his wife and Mary Ann Wright, heirs of said William Christy deceased, of in and to all those portions of said North St. Louis tract which are designated on said map filed with my said report, as lots numbered eighteen, nineteen, twenty-four, twenty-five, twenty-six, and twenty-seven and thirty-three—said lots described by said map as follows, to wit: Lot number nineteen bounded east by Second or Main street, south by lot number eighteen, west and north by Stony Creek the number of feet not known, lot number eighteen containing seventy-one feet fronting on Second or Main street and running back so as to include the whole bend of Stoney creek, bounded on the north in part by lot numbered nineteen and in part by Stoney creek, on the west by Stoney creek, south in part by lot number seventeen, and in part by Stoney creek, and east by Second or Main street, lots number- twenty four, twenty-five, twenty-six and twenty-seven, containing each thirty feet front on Second or Main
126 street and running east one hundred and forty feet, said lots joining each other, bounded south by lot number twenty-three, west by Second or Main street, north by lot number twenty-eight and east by the west end of lots numbered thirty, thirty-one, thirty-two, and thirty-three and lot number thirty-three containing thirty feet front on the Mississippi river and running back one hundred and thirty-eight feet more or less, bounded east by said River Mississippi, west by the east end of lot number twenty-four, north by lot number thirty-two and south by lot number thirty-four; at which time and place, said Martha J. Sweringen wife of James T. Sweringen of the said county of St. Louis in the State of Missouri—being the highest and last bidder for said lots of ground at the prices and sums following to wit: for lot number eighteen the price and sum of four dollars per foot amounting to two hundred and eighty-four dollars, for lot number nineteen the price and sum of one hundred and eight dollars for the whole lot, for lot number twenty-four the price and sum of two dollars and twenty-five cents per foot amounting to the sum of sixty-seven dollars and fifty cents, for lot number twenty-five, the price and sum of two dollars twelve and a half cents per foot, amounting to the sum of sixty-three dollars and seventy-five cents, for lot number twenty-six, two dollars and twelve and one-half cents per foot, amounting to the sum of sixty-three

dollars and seventy-five cents, for lot number twenty-seven the price and sum of two dollars and fifty cents per foot, amounting to the sum of seventy-five dollars, and for lot number thirty-three the price and sum of three dollars and fifty cents per foot amounting to the sum of one hundred and five dollars. The said lots were therefore, stricken off for and in behalf of the said Martha J. Sweringen, wife of the said James T. Sweringen, for said sums amounting together to the sum of seven hundred and sixty-seven dollars.

And whereas I the said sheriff did afterwards, to wit, on the third day of July, in the year of our Lord one thousand eight hun-
127 dred and forty-three make report of said sale and of all my acts and proceedings under said order, to the said St. Louis circuit court, which said report was afterwards, to wit, on the seventeenth day of July, A. D. 1843, approved and confirmed by the said court as firm and effectual forever. And an order thereupon made by said court ordering and directing me the said sheriff to make and execute unto the said Mrs. Martha J. Sweringen wife of the said James T. Sweringen a good and sufficient deed for said lots of land.

And whereas further the said Martha J. Sweringen has appointed Thomas Morrow and John O'Fallon Farrar both of the said county of St. Louis her true and lawful trustees in the premises, and has required me to execute the deed for all said several lots of land to the said Thomas Morrow and John O'Fallon Farrar, in trust for the sole and exclusive use and benefit of her the said Martha J. Sweringen her heirs and assigns forever free and clear from each and all right, title or claim therein on the part of the said James T. Sweringen her said husband, and with full, exclusive and unrestrained right on part of the said Martha J. Sweringen to use, occupy and enjoy the said several lots and each one of them and to demand and enforce of her said trustees a conveyance of all or any one or more of the said several lots of land or any parcel of either of them, to whomsoever she the said Martha J. Sweringen or her heirs and assigns may direct.

Now know ye, that I, William Milburn, sheriff of the county of St. Louis as aforesaid, in consideration of the premises, and of the said sum of seven hundred and sixty-seven dollars to me in hand paid in the manner provided in the said order by the said Martha J. Sweringen, the receipt whereof I do hereby acknowledge, and in further consideration of the sum of five dollars to me in hand paid by the said Thomas Morrow and John O'Fallon Farrar, the trustees selected by the said Martha J. Sweringen, the receipt whereof
128 I do likewise acknowledge, and in virtue of the authority in me vested by law, I do hereby assign, transfer and convey unto the said Thomas Morrow and John O'Fallon Farrar and to the survivor of the-, and to the heirs and assigns of the survivor of them, in trust for her the said Martha J. Sweringen, her heirs and assigns forever, all the right, title, interest, claim, estate and property of them the said above-named heirs of William Christy deceased of in and to the said lots of land above set forth and described as having been stricken off in favor of her the said Martha J. Sweringen, to have and to hold the same, unto the said Thomas Morrow

and John O'Fallon Farrar, and unto the survivor of them and unto the heirs and assigns of *of* the survivor of them with all rights, privileges, and appurtenances hereunto belonging, in trust for the sole and exclusive use and benefit of her the said Martha J. Sweringen, *his* heirs and assigns forever, free and clear from each and all right, title or claim of in and to the said several lots or any or more of them, on the part of *of* the said James T. Sweringen, her said husband or any person claiming under him, and with full exclusive and unrestrained right on part of said Martha J. Sweringen to use, occupy and enjoy all the said several lots and each one of them, and to demand and enforce of them her said trustees, or the survivor of them, or the heirs and assigns of the survivor of them, one or more conveyances of all or any one or more of the said several lots of land, or any parcel of either of them, to whomsoever she the said Martha J. Sweringen or her heirs and assigns in writing may direct.

In witness whereof, I the said William Milburn sheriff as aforesaid, have hereunto set my hand and seal this third day of July, A. D. eighteen hundred and forty-four.

WILLIAM MILBURN, [SEAL.]
Sheriff of Saint Louis County, in the State of Missouri.

Sheriff's Sale.

129 In virtue and by authority of an order made by the St. Louis circuit court, at the November term, 1842, of said court, on the 6th day of January, 1843, for the sale of certain real estate mentioned and described in the report of the commissioners appointed by said court to make partition of the real estate of William Christy, deceased, in the case wherein Martha Eliza Berry and Frances S. M. Wash, by Robert Wash, guardian, and Harriet M. B. Dean, Nathaniel P. Taylor, M. N. Taylor, Martha T. Christy, E. B. Smith, Virginia M. Smith, Henry S. Coxe, Mary Ann Coxe, and Howard F. Christy were plaintiffs and Edward T. Christy, James T. Sweringen, Martha T., his wife, and Mary Ann Wright were defendants, I will on Tuesday, the 30th day of May inst., between the hours of nine and five o'clock of that day, at the court-house door, in the city of St. Louis, sell all the right, title, interest, claim, estate, and property of the parties above named of, in, and to the real estate mentioned in said order *mentioned*, to wit, one-fourth cash down, and the balance in three equal portions, payable at six, twelve, and eighteen months, with notes and deeds of trust to secure the payment of the portion of the purchase-money for which credit shall be given; which said real estate is described in said order as follows, to wit: A tract of land containing fifty arpents, lying in St. Louis county, being part of a larger tract granted by concession to Antoine Vincent Bouis, conveyed to William Christy by deeds of Marie V. Bouis and Andre V. Bouis and others, dated, one of them, the nineteenth of April, the other dated the twenty-second of April, in the year eighteen hundred and sixteen, bounded as follows: Beginning at a stake on the River Gingrass, a corner of said tract, thence up the said River Gingrass, with the meanders, to a certain

point, and thence eastwardly, in a parallel line with the eastern line of Hyacinth St. Cyr's tract, to the southward line of the tract of the said grantor, and thence south forty-eight degrees west, with said line, to the beginning, so as to include the quantity of fifty
130 arpents. Also all that portion of the North St. Louis tract which is designated on the map accompanying the report of said commissioners, marked B, as lying between the most northern fifty-foot street in North St. Louis and Stoney creek, it being the land embraced in outlot number nine and divided into several parcels by streets as laid out on said map, lying in the county of St. Louis and State of Missouri.

WILLIAM MILBURN, *Sheriff.*

St. Louis, May 9th, 1843.

P. S.—A plat of the above-named real estate can be seen at the sheriff's office, subdivided into lots of convenient size.

STATE OF MISSOURI, } *ss:*
County of St. Louis, }

In the St. Louis Circuit Court, April Term, 1844, Wednesday, 3rd July, 1844.

Be it remembered that on this third day of July, eighteen hundred and forty-four, comes into court here William Milburn, sheriff of the county of St. Louis, and acknowledges the execution of the foregoing deed by him, as sheriff, as aforesaid, to Thomas Morrow and John O'Fallon Farrar, in trust for Mrs. Martha J. Sweringen, wife of James J. Sweringen; which said acknowledgment is entered on the records of the court of that day.

In testimony whereof I, John Ruland, clerk of said court,
[SEAL.] hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, the day and year last aforesaid.

JNO. RULAND, *Clerk.*

STATE OF MISSOURI, } *ss:*
County of St. Louis, }

I, Stephen D. Barlow, clerk of the county court & *ex officio* recorder in and for said county, certify that the foregoing instrument of writing was filed for record in my office on the 3rd day of October, 1844, & is truly recorded in Book M No. 3, page 70, & following. *Given*

131 Given under my hand and seal of office on this 11th day of October, A. D. 1844.

[SEAL.] S. D. BARLOW, *Recorder.*

Mr. ALLEN: To that we enter the same objection.
Objection overruled; to which ruling the defendant duly excepted.

JAMES V. S. BARRETT, being duly sworn on behalf of the plaintiff, testified as follows:

Direct examination by E. P. JOHNSON, Esq.:

Q. What is your full name?
A. James Van Sweringen Barrett.
Q. You are a grandson of the plaintiff in this case?
A. Yes, sir.
Q. You knew the family and relatives?
A. Yes, sir.
Q. Who was Nathaniel P. Taylor?
A. He married a Miss Christy.
Q. Which one?
A. Matilda Christy.
Q. She was your great-aunt?
A. My grand-aunt.
Q. Matilda Christy is mentioned in the will — Nathaniel P. Taylor; she and he were plaintiffs in this suit. Virginia Christy is mentioned in the will. Whom did she marry?
A. She married Edward B. Smith.
Q. And Virginia is the wife of one of the parties to this suit?
A. Yes, sir.
Q. Mary Ann Berry is also mentioned in the will. To whom was she married?
A. I think she was married two or three times.
Q. She was the wife of Judge Wash—Robert Wash?
A. Yes.
Mr. BELL: Was not she married to Berry before Wash?
A. Yes; she was married two or three times. I think her last husband was Robert Wash, if I remember, and she married Henry C. Cox.
Mr. BELL: Subsequently she married Cox?
A. Yes; that is my recollection.
132 Q. And Martha Elizabeth Berry was also married?
A. I will not say to that.
Mr. ALLEN: Can you state?
A. I will not state positively.
Q. Pendleton was her last husband?
A. Yes, sir.
Q. Martha L. Berry is mentioned in this will?
A. Yes, sir.
Q. Charles W. Schonberg—do you know anything about them?
A. Olcanda; she was a Miss Wright.
Q. None of those are mentioned in the children of Christy?
A. No, sir.
Q. Grandchildren?
A. No, sir.
Q. Who was your grandfather?
A. James T. Sweringen.
Q. Is he living or dead?
A. Dead.

Q. How long has he been dead?
A. He died in December, 1872.
Q. The husband of your grandmother, the plaintiff in this case?
A. Yes, sir.
Q. What became of the trustee- mentioned in these two deeds?
A. Both are dead; John O'Fallon Farrar and Charles Sweringen are both dead.
Q. When did Charles Sweringen die?
A. About two years after my grandfather; in 1872.
Q. And John O. F. Farrar?
A. He died in 1878.

Mr. ALLEN: When you speak about your grandfather you mean Chas. Sweringen died in 1872?
WITNESS: Make it about 1874.

Q. Thomas Morrow, trustee—he is also dead, is he not?
A. Yes, sir.
Q. When did he die?
A. I think Morrow died about the year 1890.
Q. Only six years ago?
A. Yes, sir.

133 By Mr. DRABELLE:

Q. What property was he trustee of?
A. Charles T. Sweringen was trustee for lot # 33.
Mr. BELL: Will you look at this plat and the property sued for in this suit, bounded by those blue lines on the north and the south, bounded east by the Mississippi river, and bounded by this line across there, which you see is 11 feet from the right of way occupied by the railroad? Now, have you ever seen that property—plat, p. 164?

Mr. ALLEN: We object to that question as being immaterial, irrelevant, and incompetent, and the further reason that this plat has not been shown to be correct.
COURT: Objection overruled.
To which ruling defendants then and there excepted.

Q. You have been there?
A. I have.
Q. How recently have you been there?
A. Two weeks ago.
Q. Describe to the court that ground—what there is on it, Mr. Barrett, if anything.

Mr. ROBERT: We object to the question as being incompetent, irrelevant, and immaterial.
COURT: Objection overruled.
To which ruling of the court the defendants then and there excepted.

A. I commenced my first visit; I went with grandfather, James T. Sweringen, and Captain Silas Bent, in the year of 1868 or 1869, to

this very identical property, and we went with a view to having it surveyed. They had surveyors with them, and I went and assisted in carrying the chains. I was a small boy at the time, and I remember there being squatters and little boats along down in here.

Mr. ROBERT:

Q. Where?

A. I was in the vicinity about this place. I could not be further from the house where we took our dinner.

Mr. ROBERT: Block 308 E.?

134 A. Where the squatters were, and I think as far west as this, I think.

Mr. ROBERT: As far as the middle of the block 660?

A. Possibly.

Mr. ROBERT: Were the squatters down as far as Commercial street?

A. Yes, sir.

Mr. BELL:

Q. Where was the river bank at that time, Mr. Barrett?

A. At the time we went there there was even so much water in that vicinity that they could not do their work as they intended to do.

Q. Was that the ordinary stage of the river of the Mississippi or was it high water?

A. I think it was high water.

Q. What time of the year was it?

A. In the summer months.

Q. In 1868?

A. 1868 or 1869; previous to grandfather's death, about three years.

Q. Now, Mr. Barrett, how frequently since 1868 have you seen this ground? How frequently since have you seen it?

A. I have seen it off and on all the time; as I grew up to manhood, I would go on that ground and other property belonging to the family; I went with different members of the family, and after I arrived at the age of maturity I went myself.

Q. During this period the ground has grown about 600 feet to the east?

A. I should think at least that much, if not more.

Q. State whether or not that has been a gradual growth.

A. I think so; it all came from the accretions.

Mr. ALLEN: We object to what he thinks.

COURT: Yes.

WITNESS: I will say absolutely from my observation there has been a constant increase.

Q. Gradual?

A. Yes; gradual.

Q. A man standing there would not see the ground grow, but going back at intervals he would observe it had grown?

A. Yes, sir.

Q. What do you know of that slough as it came above the water?

135 Mr. ROBERT: We object to that question; not shown he is an expert on that.

COURT: He can state if he knows.

To which ruling defendant duly excepted.

A. I should think the accretion was from river sand.

Q. Corresponding with the bottom of the river?

A. Yes, sir.

Mr. ROBERT: Why don't you be sworn, Mr. Bell?

Q. As to any undergrowth—willow trees—were there anything of that sort?

A. Yes; there are some still on this property.

Q. That have grown up since the earth was above water?

A. I take it to be so. I remember to have seen them when they were much smaller than now. There are quite good-sized trees there.

Q. I understand you to say, in your visits from time to time during the last 25 years, you have noticed this growth?

A. I have, sir.

Q. Where is the line today with reference to the water, above or below it?

A. It is above it.

Q. Can you walk now to the river front on this accretion opposite Mrs. Sweringen's property without difficulty?

A. Yes, sir.

Q. Without getting wet?

A. Yes, sir.

Q. Is there any wharf on this property?

A. There is a projection up there, made by Mr. Joy.

Q. How long has Joy been in occupation there?

A. I should think six or seven years.

Q. Is there a railroad track crossing the property north to south?

A. Yes, sir.

Q. How long has that been down?

A. I should think many years—between five and seven years.

Q. You think Joy went there before the railroad company?

A. About the same time, I think.

Q. Did I understand you to say that no wharf was on the
136 property?

A. Yes, sir.

Q. No posts for steamboats to tie up?

A. I never saw any.

Q. Any grading done on the property?

A. I have never known of any.

Q. No improvement of the wharf was made?

We object to his leading the witness.

Q. Did you ever see a steamboat attached to the bank?
A. No, sir.
Q. At this point?
A. I have seen some of Joy's boats—lumber barges.
Q. You have seen the property, as you say, two weeks ago?
A. Yes.
Q. Back here on 1st street, between 2nd and 1st street, has Mrs. Sweringen any improvements?
A. She has some improvements.

Mr. ALLEN: We object to the question as being immaterial and incompetent.
COURT: What is the purpose?
Mr. BELL: We are suing only for the eastern part, because Mrs. Sweringen is in indisputed possession of the balance. The property runs here and runs to the river bank. This has all been added to the property by accretion, but we are only suing for that which lies between there and there (here indicating to court by plat).
COURT: I think you are entitled to show that.
(To which ruling defendants duly excepted.)

A. She had some improvements between First and Second street, one of those houses I spoke of that I took my lunch in.
Q. What lot is that?
A. 308 E.
Mr. ALLEN: Fronting what street?
A. The house is near 2nd Str.
137 —. Did it extend onto these lots 34 and 35?
A. Yes.
Mr. BELL: Have you been familiar with that property since the time you spoke of in 1868?
A. Yes, sir.
Q. State as to whether Mrs. Sweringen's possession has been disturbed, if at all, during that time.
A. Never at any time.

Objection.
COURT: Objection sustained.

Q. Who paid the taxes?
A. We paid the taxes; my grandmother did. Mr. Farrar and I now pay the taxes.

Mr. ROBERT:

Q. Taxes on what?
A. This property running down to the Mississippi river.
Mr. ROBERT: You mean to say your grandmother paid the taxes on the property between the Mississippi river and the east line of block 2544. Did she ever pay a cent of taxes on that?
A. Yes, sir.
Mr. BELL: You know about the taxes?
A. I do.

Q. Have you during this period known of any one exercising or attempting to exercise any rights with reference to this property?

Mr. ROBERT: We object to the question as leading. He is putting the answer in the witness' mouth. I think he really ought to let the witness testify.

COURT: I think the question is generally leading. He is an intelligent witness.

Mr. BELL: My question is whether while this witness had charge of the property he had ever heard of any claim being made to the property or any part of it adversely to Mrs. Sweringen, except the claim of the lessors of the city of St. Louis, the city itself, and the railroad building a track there?

Mr. ROBERT: Suppose he had never heard any claim; what difference does that make?

138 Q. Who is paying the taxes now, Mr. Barrett?
A. I am, sir.

Mr. ALLEN: We object to that question, as it is immaterial who is paying taxes at this time.

Objection overruled; to which ruling defendants duly excepted.

Q. For how many years have you paid taxes?

A. I paid taxes this year, and other years were paid by the agents, Farrar & Tate, & Farrar & Co.

Mr. ROBERT: Give the receipts. We object to that evidence.

COURT: Objection sustained.

Q. Mr. Johnson wants you once more to describe the house on the west end of these lots; what is it built of?

A. A frame house.

Mr. ALLEN: We object to the question as being irrelevant and incompetent and not referring to the property in controversy.

COURT: Objection overruled.

To which ruling defendants duly excepted.

Q. Occupied by a tenant?

A. Yes; it was; and there was another one further east that has since fallen away.

Q. When were those houses built, Mr. Barrett, the house near 2nd street?

A. I suppose, before I was born.

Q. What year was that?

A. 1861.

Cross-examination.

E. S. ROBERT, Esq.:

Q. How old were you when you went with your grandfather to survey this property?

A. I was about eight or nine years of age.

Q. What year did you say you made that visit to the property?

A. In 1868 or 1869.

Q. And when do you say you were born?
A. 1861.
Q. How often have you visited the property in the last 11 years, Mr. Barrett?
139 A. Until within the last three years, I suppose I did not go there oftener than once—probably once or twice a year.
Q. You did not have charge of it?
A. No.
Q. You were simply interested, Mrs. Sweringen was an old lady?
A. I thought I had a right to look at the interests occasionally.
Q. Did you ever hear of a claim made by Mr. Liebke to part of this land?
A. Never, sir.
Q. Did you know Mr. Liebke was in possession of a part of it?
A. No, sir.
Q. Do you know that in 1857 a lease was made by some of the Buchanans to a part of it?
A. No, sir.
Q. And that Liebke occupied it for many years under that lease?
A. No; I do not remember.
Q. You know Mr. Liebke now claims part of that strip from 2nd Str. to the river and is claiming to be in possession?
A. No, sir; I heard this morning from Mr. Collins that Mr. Liebke—the Tyler estate and Mr. Liebke were litigating a title—litigating for the title to a small strip of land through their property, but I did not understand it ran through ours. Mr. Collins stated possibly it would run a few feet on our land.
Q. And you say you went up with your grandfather and Captain Silas Bent, who was a son-in-law of Mrs. Mary L. Tyler?
A. Yes.
Q. And do you know whether or not he was her agent at that time?
A. I think he was.
Mr. ALLEN: Who was Mr. Sweringen's agent in 1870?
Mr. BELL: The rule requires cross-examination by one counsel.
Mr. ALLEN: We are trying two cases in one.
COURT: Go ahead.
Q. Your grandfather died in 1870?
A. Yes, sir.
Q. Did he look after her property?
A. Yes, sir.
140 Q. The property was in her name also?
A. Yes, sir.
Q. Who was your grandmother's agent in 1879?
A. Farrar & Co.
Q. Who constituted the firm of Farrar & Co.?
A. First it was Farrar & Co., and Farrar & Tate then. They were young men at that time—just commencing.
Q. Who commenced previous to that?
A. Father did, in 1875, and the business was turned over to Farrar Brothers, and the son John O'Fallon Farrar and the son Charles T.

Farrar started in business together, and afterwards they took Frank Tate, and continued in charge of the affairs. John O'Fallon Farrar died, and Mr. James Farrar succeeded him, with Charles T. Farrar, and they took in Frank Tate.

Q. I notice on this plat which you have referred to once or twice the lines in green, indicating, as I understand *is*, -hat is claimed — Mrs. Sweringen's property. I notice certain streets laid out and named here. There is First street, Hall street, a space for a street east of block 660, which appears no name, and the space for a street east of block 660 E., or it may be intended for an alley. Which of those streets were there prior to 1891?

A. Hall street.

Q. Do you know how long Hall street has been there?

A. I cannot *day* how long it has been there according to my recollection.

Q. Do you know when that street was opened by the city?

—. ——.

Q. Hall street was formerly called Kennett?

A. I do not remember that.

Q. You have known it since 1885 as a street?

A. I have known it as a street. They have called it Hall street. That is my recollection.

Q. You do not remember before 1885 whether it was known by either Hall or Kennett?

A. I do not remember a street there at all.

Q. Did I understand you to say, in reply to a question by Mr. Bell, that there never had been since your recollection any
141 time when your grandmother'-, Mrs. Sweringen's, title or possession had been disturbed?

A. I said she was not disturbed at any time, as far as I knew. Squatters were on this property, and they had to be put off.

Q. If there was any change of title to any property extending from the western part of block east, as indicated by green lines, you do not know?

A. No, sir.

Q. You *fo* not know there was ever a deed or transfer of any sort made by which Martha J. Sweringen's title was affected?

A. No, sir.

Q. You never heard of it?

A. No, sir.

Q. In no way?

A. No, sir.

JOHN G. JOYCE, being duly sworn on behalf of plaintiff, testified as follows:

Direct examination by E. P. JOHNSON, Esq.:

Q. Your name, please?

A. John G. Joyce.

Q. What is your business?

A. Civil engineer and surveyor.

Q. How long have you been engaged in that business?

A. I have been thirty years in the city of St. Louis and fifteen years before I came here—forty-five years altogether.

Q. Will you look at that plat and say who made it?

—. This plat was made in my office by my draughtsman, under my supervision.

Said plat is as follows:

(Here follows map marked p. 141.)

142 Q. Is that a correct plat of lots 33, 34, and 35, in those blocks—city blocks 307, 661, 660, and so on?

—. ——.

Q. 90 feet of Sweringen property?

Mr. ROBERT: We object to the question. It is an improper question.

Q. Take these two deeds and state whether that is a correct description of the property in it. Those are the last two deeds we read in evidence of this property to plaintiff in the case.

A. Yes; I believe these are the deeds by which I made this plat. These are the deeds from which I made this plat.

Q. After having examined the deeds and this plat, I understand you to say where it is marked green around the edges correctly represents those lots # 33, 34, and 35, described in those two deeds.

Mr. ALLEN: We object to the question. He would have this witness conclude this case.

COURT: I think so, Mr. Johnson. It is the very question we are trying here.

Q. Mr. Joyce, I will ask you if you are acquainted with the land embraced within the green lines on this plat—the land itself.

A. Yes; I am acquainted with the land.

Q. How long have you known it?

A. I think for about twenty-eight or twenty-nine years—somewhere in that neighborhood.

Q. You see on this plat is marked towards the western edge of it the Mississippi river at the time of the sale by Milburn. If you know, state the character of the land within those lines, extending east from that line of the Mississippi river.

A. It is alluvial, made by the river receding—simply a depository.

Q. And simply an extension from this west line of the river by accretion?

A. Yes, sir.

Mr. ALLEN: I do not like to make an objection, but the gentleman is leading his witness.

143 Q. Mr. Joyce, you know the number of the lots Mrs. Sweringen owned between those green lines. Do you recall them?

A. I think thirty something.

Q. Just look at the deeds.

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A. There are two lots. There are three thirty-foot lots and mentioned in the deeds and lines of this land, continuing direct in the river in this plat. These green lines represent the north and south line of these three lots right out to the river bank.

Mr. Drabelle:

Q. Give the number of the lots.

A. # 33, 34, and 35. I believe that is what it is.

Q. When you first knew this land, Mr. Joyce, the first time, what was the condition of it—these lots extending down to the river bank?

A. On the river bank I recollect making a survey of the Mississippi river in 1867, from the mouth of the Missouri down to the city of St. Louis. I surveyed along the river bank at that time. My recollection is it was solid enough to walk on at that time. That was between that and what is shown on that marked as the bank of the river. You could not walk on it at certain seasons.

Q. Swampy?

A. Yes, sir.

Court: That is the present bank and the original old bank?

A. Yes, sir; in extra high water. It is inclined to be swampy yet. Immediately after high water it is very slimy, but after that is dried up it is in reasonably good condition, and they improved it with a drain for the water to go out. It was not heretofore when the water went in there. The water was locked there and could not get out. You were city counselor when it was drained out.

Q. Mr. Joyce, do you recollect the condition of this property, say, along prior to 1890; 1885 to 1890—along there?

A. I cannot be definite about it. I only saw it. I would pass by, making surveys, and paid no particular attention.

Q. What was the condition of this property between these
144 green lines, between the east line of block 2544 and the river, at that time?

A. When I made the survey for Mr. Joy there was some bush there. Willows had grown up. There were regular squatters down next to the river. They called it Oklahoma. I made a sketch of that.

Q. What improvements are on it?

A. I did not see any improvements except the squatter houses.

Q. Was there any indication of a wharf there; any improvement for a wharf?

A. Nothing of that kind.

Q. Look at this sketch and tell the court who made that?

A. I did.

Said sketch is as follows:

(Here follows sketch marked page 144.)

145 A. Dock street is on this plat.

Q. This property is just 60 feet north of Dock street. How far, approximately, does this sketch extend north of Dock street up the river?

A. About one hundred feet or one hundred and fifty feet.

Mr. ROBERT:

Q. Do you know?

A. That is a guess; no more than a guess.

Mr. ROBERT:

Q. Is there any rule by which you made these drawings?

A. I made some measurements when I did make that.

Q. About how far, approximately, from the river bank would you say it was up to the railroad?

A. My recollection is somewhere in the neighborhood of 250 feet from the river bank up to where these houses are shown.

Q. That shows, then, the condition of the north portion of city block 2544, 66 E., and 660?

A. Yes, sir.

Q. Is that a true sketch of the condition of the place at that time?

Mr. ROBERT: Did you make the sketch?

A. I did. I made the notes and a draughtsman made the sketch.

Q. How do you know the scale on that sketch?

A. I can tell from my notes.

Q. Tell how many shanties?

A. From the notes.

Q. How far is it from this house here down to this lumber pile that it appears to be?

A. My recollection is about two hundred and fifty feet or three hundred.

Q. All of this testimony of yours in regard to sketch is pure guesswork?

A. It is guesswork.

Q. You cannot, of course, remember the distances yourself, and have not consulted your notes lately to refresh your memory?

A. I used my notes, and after it was done they were destroyed.

Mr. ROBERT: We object to the introduction of it. It is only guesswork, so far as this representation is concerned; only guesswork about the distances, but a true representation of the
146 wharf at that time.

Mr. BELL: The river bank, you mean?

COURT: It does not appear to be sufficient evidence to show that this wharf was opposite to the property in question.

Mr. DRABELLE: I think I can clear it with one question.

Q. Mr. Joyce, at the time you made that sketch you made it from a survey for Mr. Joy of property situated on Dock street?

A. Yes, sir.

Q. You received an order from Mr. Joy to make a sketch of certain property south of Dock street?
A. Yes, sir.
Q. And from that survey you made that sketch?
A. I made a different sketch for this map here.
Q. At the time you made this sketch did you have any order for a survey north of Dock street?
A. No, sir.

Mr. JOHNSON: I wish to explain to your honor. Here is Dock street, and our deeds and plats read in evidence show this property exactly sixty feet north by the north line of Dock street; then comes the 90 feet of Sweringen. Now, the witness testifies that we are some two hundred or two hundred and fifty feet from Dock street to north *the* end of this plat, so necessarily it covers this land. That is the point I wish to bring out.
COURT: Suppose it shows 250 feet—Mr. Joyce, that is my recollection.
Mr. JOHNSON: This plat was merely made for us to see how the place looked at that time. That represents everything there at that time.
Mr. JOHNSON: I will submit the sketch to you.
Mr. ROBERT: It does not show the lots in controversy.

Q. You are certain this sketch covers the property?
A. Yes, sir,
Q. Mr. Joyce, you say you have been surveying here in the city of St. Louis for the past thirty years?
A. Yes, sir.
147 Q. Have you frequently had occasion to survey lots up here in this district where these accretions are?
A. Occasionally I go there, the same as the balance of the town.
Q. Do you know how that property has been held with reference to location or division of these accretions among the proprietors for the past thirty years?

Mr. ALLEN: We object to that question as being entirely a conclusion.
Mr. ROBERT: We do not care about Mr. Joyce'- opinion of it.
COURT: It is too indefinite. It is proper to show what was done by different parties.

Q. What was done towards the exercise of ownership? Just state what, to your knowledge, has been done with reference to the exercise and claim of ownership in these accretions along that bank of the Mississippi river with reference to their lands on the shore.

Mr. ALLEN: We object to the question. I submit the question is entirely too broad and calls for a conclusion of the witness.
Objection overruled; to which ruling defendants duly excepted.

A. The question of accretions in this immediate vicinity has not come up in any case except that of Mr. Joy. His was the first I sur-

veyed to the river bank, and I never heard the matter discussed since in Carondelet——

Mr. ROBERT: We object to his giving the usage or custom in Carondelet.

Mr. JOHNSON: There is no custom at all about it.

COURT: Go ahead with the answer.

Mr. ROBERT: Note our exception on the ground the question was not asked him.

Objection overruled; to which ruling defendants duly excepted.

A. In Carondelet, when I have been surveying there, the streets are continued out into the river, and the lots also run out—
148 that is, the division of lots between the streets. These division lines have been recognized running out to the river; that is the way we survey; that is the habit of surveying, and I never heard it questioned.

Q. Simply an extension?

A. Yes, sir.

Q. And accretions, no matter what *the* amount is produced, goes with the ground?

A. Yes; goes with the ground.

Mr. ALLEN: We object to that as incompetent, irrelevant, and immaterial; as not relating to the parties or property in this suit; as stating a conclusion of the witness, and as attempting to show a custom not general, nor even local to the neighborhood of this property.

Objection overruled; to which ruling defendants duly excepted.

Q. How many surveys have you made since you have been surveying in the city of St. Louis at places that went down to a point of the river from the original bank?

A. It is only this one case, where I ran the lines out to the river—that is, continuing the side line of the lot as laid out in 1841.

Q. Do you know how these accretions up here on the west bank of the Mississippi river, in this vicinity, that are bounded by the river are platted and are assessed on the books of the city and State?

Mr. ROBERT: The plats are the best evidence.

COURT: Objection sustained.

Mr. BELL: Mr. Johnson, suppose you have him tell the court what occurred on the river front in 1861, when he first saw it at this point, and the present day.

Q. How much has the river receded per foot?

A. I do not think there is much of a change in the bank from the old water works that is the foot of Ferry street down to Elwood street; not much to amount to anything.

Q. I am talking about this property—this Sweringen lot.
149 How much has the shore gone—how much has the river receded since you first saw it up to the present time? The Sweringen lot is 50 feet north of Dock street.

A. I do not know how to answer that question. The points were so irregular, although I recollect walking along that bank in 1866, and there were some ponds formed behind that bank between that and Broadway.

Q. And they have since filled up?

A. Yes; they have since filled up.

Q. You can now walk on this lot to the river front, as shown by this plat?

A. You can walk on any part of that just now.

Q. Are you able to say—you say you saw this first in 1868, when you made the survey down the river front; was the river front at that time east of the location of the railroad right of way east on that plat or west of it?

A. My recollection is it was east of it.

Q. How far east?

A. I cannot tell. Mr. Moulton is here. He got the survey I made at that time. He will be able to tell.

Q. This plat shows the river bank at what time there?

A. Along in 1841.

Mr. ROBERT: That is the Moulton survey. The land sold by Milburne, sheriff.

Q. How much has the ground grown since that day up to the present, Mr. Joyce? Will you tell us how many feet has been added to this territory from the time of that Milburne sale to the present day?

Q. About sixteen or eighteen hundred feet—about two thousand feet.

Q. Sixteen or eighteen hundred feet, measured down between the north and south line of the Sweringen property?

A. Yes, sir.

Mr. ALLEN: We object to his assuming it is the Sweringen property.

150 Objection overruled; to which ruling defendants duly excepted.

BELL: The original Sweringen property, how does that suit you?

COURT: Between the north and south line?

A. Yes, sir; of the original Sweringen property is about sixteen hundred feet.

Q. That was the line in 1850, and in forty-six years about sixteen hundred feet have been added?

A. Yes, sir.

Mr. JOHNSON: Have you a plat showing the photograph of the bank of the river at the time or prior to this accretion?

A. There is a plat that shows it, but I would sooner depend on the record which is given from the book. The distance is not given on it, and the next reliable distance is that Milburn distance which I have testified to.

Mr. ALLEN: That paper is not an authenticated survey?

A. It is what is called the Mosburger map.

Cross-examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. Mr. Joyce, this plat (referring to plat # 2) that you have held several times and referred to as your field-notes, state what it is.

A. It is a map of that portion of the city between Buchanan street and Branch street and from 9th to the river.

Said map is as follows:

(Here follows map marked p. 150.)

151 Q. The field-notes from which you have made your various reports and from which you have testified as a surveyor in this case?

A. Yes, sir.

Q. Was this plat which was made from what you call your field-notes made as a result of your surveys?

A. Yes; as a result of my surveys. It is made from my field-notes, and then from the record in the recorder's office of that property.

Q. What records did you take it from?

A. From Buchannan's addition. Here is city block 661 east and so on.

Q. Did you verify the various measurements?

A. Yes.

Q. I observe here a stretch of land 90 feet wide extending from Hall street to the wharf, to the Burlington.

Mr. ROBERT: It does not come to the right of way.

Mr. ALLEN:

Q. You saw that ground?

A. Yes, sir.

Q. I find written there, "Survey made for Collins & Jamison, attorneys for Sweringen estate, November 27th, 1894." That green line was then the survey that was made by you for the Sweringen estate?

A. Yes, sir.

Q. And for Collins & Jamison, and correctly stated there the lines as you have them?

A. Yes, sir.

Q. From what you then surveyed according to their instructions. Then, according to their instructions at that time, this survey correctly states their property?

A. Yes, sir.

Q. That is to say, an extension from Hall street on the west to the wharf on the east?

A. Yes, sir.

Q. And is bound east by the wharf?

A. Yes, sir.

Q. When you made the survey for the Sweringen estate, at the

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request of the attorneys, and the property was pointed out by them you made the survey to the wharf?

Mr. JOHNSON: We object to that question as being immaterial.
COURT: Objection overruled.

A. Yes; I surveyed according to the instructions of the
152 attorneys at the time.

Q. You have been shown a paper here which has been several times shown to the court, but not identified or offered in evidence, having on it certain green lines extending to about the middle of block 308 E. eastwardly to the Mississippi river. Did you make that plat (referring to plat #1)?

A. Yes, sir; it was made by my draughtsman, under my supervision.

Q. At whose instance?

A. Mr. Johnson.

Q. When did you make it?

A. 3 or 4 days ago.

Q. And were the green lines extending from the western line a point 11 feet west of the Burlington down to what is marked Mississippi river?

A. These light lines were continued on to the river.

Q. I understand you to say you had instructions from Mr. Johnson?

A. Yes, sir.

Q. And were told to put the lines down to the river?

A. Yes, sir.

Q. Mr. Joyce, you know where Hall street is?

A. Yes, sir.

Q. How wide is it?

A. One hundred feet.

Q. Do you know that has been a street of the city of St. Louis?

Mr. BELL: Mr. Joyce'- evidence would be incompetent on that.

Q. With reference to that part of Hall street which is rectangular, made by what is called Hall street within the limits of this ninety feet which you referred to as being extended from block 308 east, you understand what I attract your attention to?

A. Yes.

Q. At the point which is called the Sweringen ninety feet, state whether or not Hall street had been a street; and, if so, how long to your knowledge.

Mr. BELL: We object to that. He is now calling upon Joyce to tell how long this has been a public street. He is simply demanding that he exercise his judgment as to what constituted a public street, and that is not competent.

153 COURT: Objection overruled.

A. I always recognized that as an open street.

Mr. BELL: We object to that answer.
COURT: Objection sustained.

Q. How long have you known that as an open street?

A. I think about fifteen or sixteen years.

Q. You have identified certain property as having been surveyed with reference to two deeds here whose description called for property in block 308 east?

A. Yes, sir.

Q. That extension of lines to which — referred as being clear to the river was made upon the basis that the lots in block # 308 E. called for a description to the river, and since the river had moved further east you continued those lines?

A. That is correct.

Q. And a further fact, in continuing those lines you carried them directly across and included Hall street?

A. That is the fact.

Q. Then I observe down here on the corner of what is marked Dock street and in the part marked wharf something written this way (referring to plat # 2): "Moulton established this corner by adapting the old stone on the north line of Ferry street and the old stone at Destrehan street and prolonged the same southwardly to Dock street"?

A. Yes, sir.

Q. What is that corner?

A. That is the corner of the northeast corner of Dock street and what the city claims as the wharf.

Q. Who is Moulton you put down there?

A. Mr. Moulton was the engineer for the city.

Q. That is the point of measurement which you used in connection with that survey?

A. Yes, sir.

Q. The point, a stone, would be recognized by you as established by Moulton, engineer for the city in the wharf department, as the corner to measure from?

A. Yes, sir.

Q. Did you mark this stone in the corner of Dock street
154 and the wharf as being a stone established, forming that corner?

A. I made a note on the map. I found the corner there and adopted that.

Q. And used it for the purpose of making your survey?

A. Yes, sir.

Q. Mr. Joyce, just take this present plat (referring to plat # 2), which has been referred to by plaintiff here and testified from, which has the green lines running down to the river marked Sweringen between. Now, then, where on that plat is this stone on the corner of Dock street and the wharf?

A. That would be sixty feet from this blue line.

Q. It would be on this line which is marked as being eleven feet west of the western line of the Chicago, Burlington & Quincy?

A. Yes, sir.

Q. As indicated on this present plat?

A. Yes, sir.

COURT:

Q. 60 feet southwest?

A. Sixty feet south from the line; that line continued down without any reference to the wharf line or any other line which I show on my field map. I can point out to your honor, if the gentlemen desire, where the stone is located on the tracing.

Q. You are referring to the stone on the corner of Dock street and the wharf?

A. Yes, sir.

Q. That is the supposed line, west line of the wharf, as shown by the city records and staked out by the engineer, Mr. Moulton?

A. Yes, sir.

Q. That stone is at the intersection of the wharf line, supposed west line of the wharf and the north line of Dock street, where the two lines meet each other?

A. Yes, sir.

Q. And the tracing which you hold in your hand, it is at the intersection of the north line of Dock street with a line which is noted as being eleven feet west of the west line of the Chicago, Burlington and Quincy. Is that right?

A. Yes, sir.

155 Q. Calling this the westwardly line, which is eleven feet west of the Chicago, Burlington and Quincy, the wharf line, how does that continue? Does it not continue in a northerly direction, and also 11 feet from the C., B. & Q., to a point as far north as Buchanan street—does it not?

A. Yes, sir.

Q. That line which we have called the wharf line is indicated in the same way on your field-notes, from which you have been testifying?

A. Yes, sir. This map has been made from my map of field-notes.

Q. It is a copy of the notes?

A. Simply a copy of it.

Q. Except as to that ground, the part extending through the Chicago, Burlington and Quincy tracks and the wharf to the river, that you say was put on three or four days ago at the suggestion of Mr. Johnson?

A. Yes, sir.

Q. That is the part which is marked as a continuation of the ninety-feet track from block # 308 eastwardly to the river line?

A. Yes, sir.

Q. You said something in your direct examination from your field-notes about having put here the Buchanan survey. What do you mean by that?

A. Buchanan's addition.

Q. Buchanan's addition you have marked green on the field-notes?

A. Yes, sir.

Q. What did that Buchanan's addition cover, as indicated on your field-notes here?

A. That Buchanan's addition covers a tract of land from a point 150 feet north of the north line of Dock street to the south line of Buchanan street and from Hall street to the river.

COURT: South line of what street?

A. The south line of Buchanan street. The continuation of Rocky branch is the south line of Buchanan street.

Q. That crosses Dock street southwardly, does it not?

A. It crosses Dock street southwardly, does it not?

156 A. It crosses Dock street southwardly, then recrosses it in a northeastwardly direction.

Q. You don't mean Rocky branch; you mean the old river bank?

A. Yes, sir.

Q. That is to say, at the time that the Buchanan survey was laid out?

A. Yes, sir.

Q. The Rocky branch ran into the Mississippi at a point some feet south of the south line of Dock street and the line of the Mississippi river then and continued in a northeasterly direction across a part of city block 660 E. and so on down so as to cross what is known as city block 2544?

A. Yes, sir; and across Buchanan street.

Q. You have on this plat here as being the old line of the Mississippi river this line of the Mississippi river at the time of the Buchanan partition, see Book 308, page 524?

A. That is correct.

Q. Then that is between the line of Buchanan's addition?

A. Yes, sir.

Q. Now, I notice that you have here opposite the mouth of Rocky branch the words "middle of Rocky branch"?

A. Yes, sir.

Q. Book 308, page 524, that indicates, that was indicated by Buchanan survey, the mouth of Rocky branch; is that right?

A. That is the mouth of Rocky branch as there indicated.

Q. As this is indicated in the Buchanan's addition or partition proceeding, — is some little distance to the southward of the south line of Dock street, is it not?

A. Yes, sir.

Q. And as the line of the Mississippi river extend*ing* at the time of the Buchanan addition it left a part of 660 E. and a part of block 660 extending to the north line of Dock street, did it not?

A. Yes, sir.

Q. Was not the Buchanan addition the property which is covered by the space of ninety feet here put down as being Swerin-

157 gen—is all to the northward and included within the space covered by Buchanan subdivision?

A. There is a part of it. That takes in the west line of Rocky branch in 1866 and the west bank of the Mississippi river in 1866. Rocky branch runs southeast and crosses the Sweringen tract and crosses Dock street to the bank of the river, and then the bank of

the river runs north in a northeasterly direction and crosses it again.

Q. You mean the river bank as there indicated, in 1866, you say was west of it, and east of it water?

A. Yes, sir.

COURT: How is that?

Q. Was that east of that bank and therefore included what is now part of block 2544 as covered by your green lines, for the Sweringen property was then in the river, was it?

A. Yes; it was east of the bank of the river.

Q. East of the bank of the river?

A. Yes, sir; whether there was any water there all the time or not I cannot say. In high water it was below it and low water it was above the water.

Mr. ROBERT: Do you know that?

A. I do not know that to be the case.

Q. Calling your attention again to the space within the Buchanan survey, take the line of the Mississippi river as indicated in 1866 and the line of Rocky branch as then indicated. Now take a point at the intersection of the north line of what is here put down as the Sweringen property, in block 660 E., with the Mississippi bank as then indicated and then the same easterly and westerly line of the so-called Sweringen property at Rocky branch. Can you tell how far that is?

A. About six or seven hundred feet, according to the plat.

Q. Six or seven hundred feet on the north line of the so-called Sweringen property is indicated by Rocky branch and the wharf and the then bank of the river on the east?

A. Somewhere there.

158 Q. Take a point at the intersection of the then line of the Mississippi river with the southern line of the ninety feet of Sweringen claim, and go to the Rocky branch, along that line of the Sweringen claim, and tell how far on the southern line of the Sweringen claim from the line of the Mississippi to Rocky branch is.

A. That would be about three hundred and fifty—perhaps three hundred and seventy-five feet.

Q. Now, then, I notice across this plat and extending across the green space marked by you as surveyed for Sweringen and being within the ninety feet referred to as claimed by Sweringen the western half of block 660 E. We have here Buchanan's.

A. That means the property in Buchanan's name, and recorded when the map was made.

Q. That extends across the ninety-foot strip, does it not?

A. Yes, sir; I went to the record for the purpose of finding the owner's name as they appear, and found that piece in Buchanan's name.

Q. City block 660 and just below Rocky branch and including some of this Sweringen claim I see the word McPheeters.

A. I put that name on at that time, when the map was made.

Q. Do you know when the map was made?

A. Two years ago, as this got worn out I put it aside and made a new map. They got worn out by use.

Q. I see here between city block 660 and 660 E. a space—white—that appears like other spaces that are used for streets. What is that?

A. That was laid out—at least it is my recollection it was a street laid out by Buchanan, and there was a question whether Buchanan had the right to lay a street out, and I believe when it was tested he had not; that is my recollection.

Q. Do you know when it was?

A. I only remember the circumstances.

Q. You know it was laid out by the survey and plat in Buchanan's subdivision as a street?

A. Yes, sir.

159 Q. At the same time Buchanan's street, when the addition was made, that was in 1866?

A. Yes, sir.

Q. Then I discover in the center—I discover what appears to be the centre of block 660 and running northwardly and southwardly from Buchanan street to the Rocky branch—what appears like the platting of an alley, which is marked at the intersection of Buchanan street twenty feet. What does that mean?

A. That dedication was made by Buchanan at the time he laid out the subdivision.

Q. Of what?

A. Of an alley.

The COURT:

Q. Where is that?

A. Block 660.

Q. Just to the westward of that is some property marked Julia Crosby. Where does that property extend to? It extends, does it not, to the Rocky branch?

A. Yes, sir.

Q. That intersection near Rocky branch is inside of the space which is in the green here marked by you as surveyed by Sweringen?

A. Yes, sir; I would like to state also I have got a note here along the line of city block 660, 660 E., and away up onto Rocky Branch line, signed April 13th, 1873, between Silas Bent and McPheeters, attorney for the Buchanan and Tyler estate, thirty feet.

Q. That is how far east of the Sweringen property—north, I mean?

A. That is one hundred and twenty feet.

Q. One hundred and twenty feet north?

A. Yes, sir; it runs parallel to the Sweringen property and one hundred and twenty feet north of it.

Q. Mr. Joyce, in block 660 E.—that is, east—I find here also what appears to be marked an alley, twenty feet wide. What is that?

A. That is the dedication when Buchanan laid out the addition.

Q. That extends from Buchanan street to the then line of the Mississippi river?

A. Yes, sir.

Q. Does that western side of that alley extend clear through
160 the so-called Sweringen tract, which is in green, and the eastward side extends north to the southern line of the ninety feet, does it not?

A. Yes, sir.

Q. Further to the east here and between blocks 660 E. and 2544, what is this wide space? It looks like a street.

A. That is the dedication for a street in the same direction.

Q. That is marked 60 feet wide?

A. Yes, sir.

Q. It indicates that a street had been dedicated sixty feet wide?

A. Yes, sir.

Q. That extends, does it not, from Buchanan street on the north to the line of the Mississippi river as then dedicated on the south?

A. Yes, sir.

Q. The then line of the Mississippi river at that time was a little to the east of the green—northward, I mean; to the north of the green space which is called Sweringen. In other words, it did not go as far north as the Sweringen property?

A. No, sir.

Q. At that time where was the southern part?

A. The southern part was in the river.

Q. The southern part was in the river?

A. Yes, sir.

Q. It is now all the way from Buchanan to Dock street. Is that right?

A. My memory does not serve me in that. I presume it is——

Q. Will you point to city block 2544 as it is on your plat?

A. Yes, sir.

Q. What would be a continuation of the east line of that street?

A. It would continue south to Dock street and on the east by the river or wharf line, whichever you choose. If you told me to make out a description, I would do just as you say.

Q. Mr. Joyce, suppose now you were taking new field-notes, and somebody come in and asked you how city block twenty-five forty-four was bounded, would you not say it was bounded on the
161 north by Buchanan street, south by Dock street, and west no name, and east by the wharf?

A. I would take the river, as the matter is in litigation.

Q. Is that not what your plat shows?

A. It is for my information.

Q. What does the plat show?

A. I am not sure it gives the distance from this and to the river bank.

Mr. ROBERT: What is marked on the plat; how did you designate it?

A. I have got the word "wharf."

Q. I understood you to say you surveyed all the northern river bank somewhere about 1866 or 1868?

A. In 1866 and '68 also; first when I went with Bishop, city engineer, and the next one was made with Moulton.

Q. Do you know what is known as the Kountz survey?

A. I cannot say.

Q. Have you seen it?

A. I must have used it. I know of the Sayer.

Q. Do you remember having seen this map?

A. Very *little* I have; all maps I have access to them; probably I have.

Q. Were you connected at one time with the harbor and wharf department?

A. Yes, sir.

Q. At that time did you make use of these different plats in the harbor and wharf department?

A. They were kept as a matter of record for necessity for any use.

Q. What was used principally, the upper bank or the lower?

A. The lower bank. I expect I have seen that. I do not know.

Q. Can't you tell whether it is the correct plat?

A. I am satisfied it is not.

The COURT: What is that called?

Mr. ALLEN: The Kountz survey, made in 1843.

Q. You cannot identify this map?

A. No.

The COURT: I would like, in order to make the record
162 clear, for the witness to state how these various blocks are bounded—that is, by what streets or what marks here on this map. I am only referring to blocks 308 E., 660, 660 E., and 2544; — are the only ones I refer to. Mr. Joyce, will you just point them out?

A. That is bounded west by Second street, on the east by First street, on the north by Buchanan street, and south by Dock street. Block 660 W. is bounded on the west by First street, I believe it is; on the east by Hall street——

Q. Do you know the former name of Hall street—do you remember it as formerly being Kennett street?

A. Yes, sir. On the south by Dock street and the north by Buchanan. Block 660 is bounded on the west by Hall street or Kennett street, on the east by Second street, that used to be called North Commercial, on the east by Commercial street, and south by Dock street, and on the north by Buchanan street. Block 660 E. is bounded — west by North Commercial street, on the east by a street without a name shown in Buchanan's addition, south by Dock street, and on the north by Buchanan street. Block 2544 is bounded on the west by a street laid out in Buchanan's addition without any name, on the south by Dock street, on the north by Buchanan street, and on the east by where it is the wharf line or the river.

Q. How long have you known block- 660 W., 660, and 660 E.?

A. For a long time.

Q. What do you mean by a long time?

A. Several years. These numbers were put on as the ground progressed and as the blocks were laid out. The street department supplied these numbers for the blocks.

Q. City block 2544. How long have you known that as being a number?

A. That I cannot tell; as a matter of fact, a good many years; probably some time in 1866; I cannot say exactly.

Q. Would you say it must have been in 1866?

A. May be 1866.

Q. Before 1875?

A. I think so.

163 Q. Between 1866 and '75?

A. Yes, sir.

The COURT: What block are you talking about?

A. Twenty-five forty-four.

The COURT: What was that about?

A. I have known it some time between 1866 and 1875. I cannot fix the date; I cannot fix the block numbers previous to that.

Mr. ROBERT: Are you positive about that?

A. I only know it is now.

Redirect examination by LEVERETT BELL, Esq.:

Q. Mr. Joyce, this plat that you have been testifying from, I understand, is a plat made by you?

A. Yes, sir.

Q. Now, your attention has been called to the fact that across the river front and across what is called the original Sweringen property, in question here, there appears in large letters the word "Wharf"?

A. Yes, sir.

Q. In point of fact, Mr. Joyce, is there any wharf there in existence today?

Mr. ALLEN: We object to that question as calling for a conclusion of the witness.

The COURT: Objection sustained.

Q. Is it just as nature left it?

A. As settled by the river.

Q. Any improvement on it at all?

A. No, sir.

Q. You have testified here, in referring to this plat, about various dedications made by Buchanan and others; what do you mean by that, Mr. Joyce?

—. ——.

Q. Do you mean you personally have any knowledge of any dedication? You told us you simply copied into this plat something you found on other plats.

A. My testimony is simply to the effect that I copied from Buchanan's addition—from the record of Buchanan's addition.

Q. But, as to whether or not there was any dedication, you do not pretend to say; you have no knowledge of that; you
164 simply copied another plat?

A. I simply copied another plat.

Q. This shows an actual survey of the line of the Mississippi river in 1893?

A. Yes, sir.

Q. Did you actually run out the water line there?

A. I ran it out for a short distance, I think, for Mr. Joy at that time.

Q. Will you tell us the distance from the west line of the property sued for in this case eastwardly to the water's edge between the lines projected? Now, what is the distance from the property sued for to the Mississippi river in 1893?

A. About three hundred and sixty feet, I make it.

The COURT: That is 1893?

A. Yes, sir; from the water's edge to what the city's claims as the west wharf line, about three hundred and sixty feet.

Q. You have no personal knowledge the way the Mississippi river was at the time of the Buchanan partition, before you ever saw it?

A. I did not see it at that time. I was here in St. Louis, but did not see it.

Q. You give that line from what you find in the books?

A. From the record.

Q. You have also given the line on this plat of the Mississippi river, North St. Louis addition, see Book 208; you have shown that line in the same way?

A. From the record.

Q. When you speak of the record, what do you mean?

A. The books in the recorder's office, which have reference to this property.

Q. You have copied off these lines that I have mentioned from the books in the recorder's office?

A. From the plat recorded.

Q. With the deed, for instance?.

A. Yes, sir.

Q. But the water line in 1893, as shown by this plat, you actually surveyed?

A. Yes, sir.

165 Q. You actually surveyed the line of the Chicago, Burlington and Quincy right of way?

A. Yes, sir.

Q. As they staked it out?

A. Yes, sir.

Q. By your examination of these various plats, Mr. Joyce, didn't you find that this property created west of the bank of the Mississippi river is divided among owners of land, projected on the same course that the original lines were on the surface of the earth?

Mr. ROBERT: That is testimony-in-chief.

The COURT: Objection sustained.

Q. To get this matter cleared up, as I understand it, this plat that you have made here does not represent any work done by you or your man, except the water's edge as shown here, and excepting the location of the right of way of the railway across this so-called Sweringen property; did you actually run out the northern line on the surface of the earth?

A. As shown here, I surveyed from this map. I surveyed for Collins & Jameson, for the Tyler estate, and I surveyed for the Sweringen estate, and I surveyed for Joy.

Mr. ROBERT: What are the colors?

A. The Joy is red, the Sweringen is green, the Tyler is red, and here is another piece of ground—I think Hafner property—is in green also.

Q. Mr. Joyce, did you actually run out on the ground this northern line of the city of St. Louis, shown on the plat or taken from other plats?

A. That has been run out.

Q. In making up this plat did you run out on the surface of the earth this line shown as the northern boundary of St. Louis, or take it from other maps?

A. I ran it out.

Q. This location you made on this map is the result of an actual survey you made of the surface of the earth?

A. Yes, sir.

Q. The east line of the Mississippi river is the result of an
166 actual survey?

A. Yes, sir.

Q. I see Rocky branch—here is a piece here between the Tyler estate and the Sweringen estate—the lines of the ground were actually run on the surface of the earth, were they not?

A. Yes, sir.

Q. You frequently use the expression in your cross-examination with reference to various streets, alleys, &c., that these were dedicated streets or alleys of the city of St. Louis. By that you mean that you have known these streets on the various maps and plats, and you assume they are all dedicated?

Mr. ROBERT: We object to the question as being leading.

Q. I will ask you if you yourself examined any papers constituting a dedication of these streets and alleys.

A. I did not examine any paper to see whether the dedication was correct. I merely copied the record.

Q. When you refer to the record you mean the plats on file in the recorder's office?

A. I mean Buchanan's addition, the plats filed by the Buchanan addition.

Q. Is any of this plat copied from maps at the city hall, wharf, or street departments?

A. The wharf is copied from the city hall.

Q. That is, copied from the map at the city hall?

A. Yes, sir.

Q. And that I suppose describes the west line of the wharf as it is located here on your plat?

A. Yes, sir.

Q. Now, Mr. Joyce, you have seen the survey of the Labeaume patent, have you?

A. Yes, sir.

Q. You are familiar with it?

A. Yes, sir.

Q. Are you able to state whether the property sued for in this case is embraced in the prolongation of the line of property contained in the original Leb-aume survey?

Mr. ROBERT: We object to that for the reason he should have gone into that in chief.

167 The COURT: I think the witness testified in regard to that. Answer the question.

To which ruling of the court the defendants then and there excepted.

A. The continuation of these lines would be inside of the Labeaume patent.

Q. I want to know if you take property in the Labeaume patent and continue its lines eastwardly to the present waters of the Mississippi river; that is the point I want to get at.

Mr. ROBERT: We make the same objection. The ground you are suing for is an accretion and of course did not exist at the time of the Labeaume patent.

Mr. BELL: I will get at it this way, in order to avoid any dispute—that is, if you project the line of the Labeaume survey of the Mississippi river, you will include the property sued for in this action, will you not?

COURT: The witness testified that; — is my impression. There is no objection to stating the fact now.

COURT: Can you state whether or not an extension of the north and south lines, if extended to the river, would embrace the property in question, if you know that to be a fact?

A. I know it to be a fact; I know the north and south lines of the lots is the property in question.

Mr. ROBERT: That is not an answer to the question put him.

Mr. ROBERT: I want to offer the plat in evidence that has been testified from, called plat #1. This record will be perfectly unintelligent without the plat. We are entitled to have them offer it in evidence. We ought at least have it attached to the testimony as explanatory of this witness' evidence.

Mr. BELL: I do not think it is competent to submit it to the court. It is not competent to exhibit a map to the jury.

168 COURT: If the map is not offered, that testimony will be excluded.

Mr. BELL: We will offer these. We offer the plats 1 and 2.

COURT: They both are in evidence?
Mr. BELL: Yes; both are in evidence.
Mr. BELL: On plat # 2 I see a red line. What line is that?
Mr. ROBERT: We object to this question. He has already testified about that line.
COURT: Objection overruled.
To which ruling defendants duly excepted.

A. Red line, by agreement signed April 3d, 1873, signed Silas Bent and William McPheeters, trustees for Buchanan and Tyler estate.
Q. Did you run that line out on the surface of the earth?
A. Yes; this was run out.
Mr. ROBERT: He asked if you run it out.
A. I believe my son run that out. It was done under my directions.
Mr. BELL: What line is that with reference to the Labeaume property?
Mr. DRABELLE: I do not see how that could be competent.
Mr. BELL: I am asking what line is that with reference to the Labeaume property, whether it is the boundary between the Labeaume patent and the patent to the north?
COURT: Objection overruled.
To which ruling defendants duly excepted.

A. This line was surveyed by agreement, signed April 3d, 1873, signed Silas Bent and William McPheeters, trustees for Buchanan and Tyler estates.
Q. Does that represent the division line?
A. That is the division line. That represents the northern line; it represents simply a line agreed to and the line so run out.
169 Q. How far north of the property sued for is that—how many feet?
A. That is 125 feet. Let me see; 120 feet north of the property in question; 120 feet north of the property in question.
Q. That is a line agreed upon between Buchanan and McPheeters?
A. I got it signed Silas Bent and William McPheeters.

COURT: Pass on to something else.

Q. Mr. Joyce, did you run that line from this plat?
A. I run it from this agreement. It was run from that and from the agreement both.
Q. You are familiar with the Rocky branch where it runs through the lines north of Labeaume survey?
A. That was sewered out years ago.
Q. Were you familiar with Rocky branch before it was sewered?
A. Yes, sir.
Q. When was the sewer built?
A. 27 or 28 years ago.
Q. Were you familiar with the condition of things at Rocky branch prior to the building of the sewer?
A. No, sir.

Recross-examination by CHARLES CLAFLIN ALLEN, Esq.:

—. You say you used this plat which has the agreement of Mary L. Tyler, by Silas Bent, and William McPheeters, for the Buchanan estate, dated April 3d, 1873?

A. Yes, sir.

Q. Which has been identified by Mr. Collins?

A. Yes, sir.

Q. You used this plat in making the survey?

A. Yes, sir.

Q. Was it this plat or a copy of it?

A. I used that literally.

Q. In surveying all these various lines you referred to Mrs. Sweringen's property being bounded by the wharf, did you not?

A. I presume so.

Mr. BELL: But there is no wharf there.

Mr. ALLEN: I understood it was offered in evidence.

Mr. DRABELLE: It was taken subject to objections.

170 (And the objections were overruled; to which ruling defendants then and there excepted.)

Q. Mr. Joyce, you said in your redirect examination you had no personal knowledge of the river in 1866. Didn't you testify you made a survey as early as 1866?

A. I made it before 1866. I think it was in 1867 I made the survey. My recollection is it was in 1867.

Q. Then, if you made your survey in 1867, the testimony you gave originally yesterday in your direct examination as to the stage of the river was shortly after the Buchanan survey was made?

A. Yes. My recollection is in 1867 I made the first survey of the river.

Q. Do you remember about some longitudinal dikes in the river?

A. I know they built the dikes in 1867.

Q. Where?

A. Along what is shown as low water on the eastern line of the river.

Mr. BELL: Who do you mean when you say they built?

A. I cannot tell. I presume the city. I cannot tell possibly who ordered it.

Mr. ALLEN: Upon the order of the harbor and wharf department?

A. I did not have anything to do with that part of the work. Mr. Rapp was the engineer.

Q. Don't you remember, when you first knew that property, an old spur dike was there—before the water was about Ferry street a dyke was built there?

A. The only dyke is the one built by the water works opposite, north of Ferry street, to project the bank from the river, and I built one myself.

Mr. BELL: For the city?

A. Yes, sir.

Mr. ALLEN: When was that?

A. It must have been in 1876. I think it was 1877. I think that is it, 1876 or 1877. That is my recollection.

171 Q. Don't you know, as a matter of fact, some longitudinal dikes went up there before 1877; the first was built there in 1876?

A. I cannot tell at what part of the river.

Q. I understood you to say on field-notes offered as plat # 2 there has been a survey by you actually?

A. Yes, sir.

Q. That includes the green strip marked Sweringen property down to the wharf?

A. Yes, sir.

Mr. BELL: He has stated that ten times.

Mr. JOHNSON: I have a number of old tax receipts which appear on the location of this property and the claim to it running from the year 1851 down about 1870. The first receipt is——

Mr. DRABELLE: What is the purpose of offering these?

Mr. JOHNSON: It has two or three purposes. It bears on the location of this property, and during the time these parties claim it with Buchanan's claim I am offering tax receipts. Tax receipts are always evidence tending to show possession and claim.

COURT: I think they are competent for the purpose of showing the boundary line.

Mr. JOHNSON: I will offer these for all purposes.

Objected to by defendants as incompetent, irrelevant, and immaterial, as not describing or relating to the property in controversy.

Objection overruled; to which ruling defendants then and there duly excepted.

Offer of tax bills in evidence withdrawn temporarily.

CHARLES T. FARRAR, being duly sworn on behalf of plaintiff, testified as follows:

Direct examination by E. P. JOHNSON, Esq.:

Q. Your name, please.

A. Charles T. Farrar.

Q. You reside in the city?

A. Yes, sir.

Q. You are acquainted with Mrs. Sweringen, are you not?

A. I am.

Q. What is your business?

A. Real estate.

Q. How long have you been at that business?

A. Twenty years.

172 Q. Did you have charge and control of Mrs. Sweringen's property at any time during that point?

A. Yes; since 1875.

Q. I will ask you to look at this plat (referring to plat # 1) and see whether you are familiar with that property marked in green.

Mr. ALLEN: We object to that as identifying plat #1 and explaining to the witness and referring to property which has not been shown to have been the property of the plaintiff.

COURT: Objection overruled.

To which ruling the defendant then and there duly excepted.

A. Yes, sir; I had charge of this from 2nd street and to the river.

Q. When do you first recollect noticing that property, Mr. Farrar, or looking after it?

A. October, 1875.

Q. What improvements, if any, were on this property in green at that time—what houses, if any?

Mr. ALLEN: Same objection.

Objection overruled; to which defendants then and there except.

A. A few squatters.

Q. What houses do you recall on the west end there of the ground?

A. There is no house here. On this lot there were several outside of the ground you speak of.

Q. Didn't the house extend over on the green property?

A. No, sir.

Q. What did you do in connection with that property for Mrs. Sweringen during twenty years?

A. I took general charge of it and paid the taxes.

Q. What was the condition of that property when you first saw it?

A. Pretty low.

Mr. BELL: Under water?

A. Under water, if it was high water and low, but not under low water.

Mr. BELL: In ordinary stage it was above water?

A. Yes, sir.

173 Mr. JOHNSON: How often do you visit that property?

A. Every few months.

Q. What act did you do in relation to it?

A. On several occasions I put the squatters off.

Q. What do you mean by squatters?

A. The people that go there and take possession and build a little shanty and live there.

Q. On the river front?

A. They squat all along there clear down to the river. Some build boats, and at high water they would float.

Q. How for did you exercise that control over that property for Mrs. Sweringen—how far down?

A. To the river.

Q. How long have you continued to do that and how often?

A. From October, 1875, down to within a month or two.

Q. Do you recollect where the railroad and Mr. Joy went on this part of it next to the river?

A. I think three or four or four or five years ago.

Q. Up to that time have you kept off and warned squatters to keep off clear down to the river bank?

Mr. ALLEN: We object to the question as leading.
COURT: Objection sustained.

Q. How far have you exercised this control up to the time the city and Mr. Joy and the railroad —, I should say?
A. We kept them off and kept possession of the property and paid the taxes on it.

Mr. ALLEN: We object to the answer. It is not responsive, and is an opinion given by the witness.
COURT: I think the possession—that is an opinion of the witness. That part will be stricken out.

Q. Prior to that time what did you do with reference the presence of squatters on that land between the river and, say, two or three hundred feet west?
A. Notified them to leave.
174 Q. What was the effect of your notification to them?
A. They usually moved off.
Q. So they did leave when you notified them?
A. Yes, sir.

Mr. BELL:

Q. Did you ever hear of any adverse claim except the city'-? During that time did you know of anybody else attempting to interfere with Mrs. Sweringen's control over this property except the squatters who would leave when you notified them?

Mr. ROBERT: We object to the question as incompetent and calling for a conclusion of the witness.
COURT: Objection overruled.
To which ruling defendants duly excepted.

Ans. No; I never heard of any one.
Q. From 1875 up to the time the railroad and Mr. Joy went on it?
A. No, sir.
Q. Do you know whether the railroad obtained Mrs. Sweringen's consent to go on it?
A. I never heard of it.

Mr. ALLEN: We object to the question as immaterial.
Objection overruled; to which ruling defendants duly excepted.

Q. Or Joy either?
A. No; I never heard of that.

Mr. BELL:

Q. The city of St. Louis?
A. No.

Cross-examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. You say you have been Mrs. Sweringen's agent since 1875?
A. Yes.
Q. Were you her agent in 1879?

A. Yes, sir.
Q. All of 1879?
A. Yes, sir.
Q. You say there has never been any person who made any claim or had any possession from the west half of block 308, which fronts on First street, clear down to the river from 1875 until the railroad built its tracks?
A. Yes, sir.
Q. You never heard of any?
A. No.
Q. Never heard of any interference with the title of Mrs. Sweringen's property?
A. Never did.
175 Q. You never did?
A. No, sir.
Q. No part of it?
A. No, sir.
Q. Did you transact all her business?
A. Yes, sir.
Q. You paid all her taxes?
A. Yes; in connection with my uncle, Judge Farrar.
Q. You have testified, didn't you, that you have paid the tax always?
A. The judge and I.
Q. Who attended to street-opening matters?
A. We did generally.
Q. Did you ever know about any street being opened there?
A. I do not recollect now.
Q. Never heard of it?
A. I do not recollect.
Q. Do you know where Hall street is?
A. Yes; that was called formerly Kennett.
Q. Do you know anything about the opening of Kennett street?
A. No; I do not recall it?
Q. Do you remember whether Mrs. Sweringen had anything to do with the opening of Kennett street?
A. I think she did.
Q. Do you remember whether Mrs. Sweringen was assessed any benefits or damages?

Mr. BELL: That ought to be proven by the record.
COURT: Objection overruled. I cannot remember without referring to any books.

Q. Hall street or Kennett street from Dock street north goes right through this ninety feet which you have spoken of as being a continuation from city block 308 E. clear down to the river?
A. Yes, sir.
Q. It takes in 100 feet in width there, does it not?
WITNESS: Which way?
Q. I mean 100 feet in width of the street east; the street, in other words, is 100 feet wide?

A. I do not know.

176 Q. You do not know how wide it is?

A. No.

Q. You know the street is there, don't you?

A. There are streets on the plat.

Q. Don't you actually know the street was opened by the city of St. Louis, the one there between the river and 2nd street?

A. I do not recollect.

Q. You do not know?

A. No; I cannot say.

Q. Do you know of one that goes through the property?

A. One street goes north and south.

Q. And that has been used ever since you have known it?

A. That is pretty hard to answer.

Q. Try to remember, Mr. Farrar.

A. I cannot remember that just on the impulse.

Q. As a matter of fact, it must have been put there before 1875, and must have been there ever since that; can you remember anything about it?

A. In all recent years the street was always there.

Q. How far back?

A. I would not attempt to estimate. I would not estimate.

Q. Five, ten, twelve years, or what?

A. I would not estimate.

Q. You testified in your direct examination that you had put squatters off by notification, and that all along the green strip and plat # 1, indicating the Sweringen property; you do not mean you put any of them off Kennett street or Hall street?

A. This property is in a wild state up there and it is pretty hard to locate a street until it is built up and graded.

Q. Still you have known the street was there for a number of years?

A. I would not say how many years.

Q. But you have known it for a number of years?

A. For some time.

Q. And you do not mean you put any squatters off that

177 ground on that street?

A. I might have. I did not have a survey. Still, I know where the street is.

COURT: What street?

Mr. ALLEN: He is referring to the strip (here indicating).

WITNESS: Some street was there. I cannot remember how long there has been one there.

Q. Do you mean to say that you have been actually yourself paid all of the taxes, general and special, assessed against Mrs. Sweringen on her property in St. Louis since 1875?

A. Yes, sir.

Q. Did you pay any amount to the city of St. Louis to redeem the ninety feet that was sold for opening Kennett street?

A. I cannot answer that without seeing the bill and referring to the books.

Q. You have no recollection whatever about Kennett street or its opening, or the fact that Mrs. Sweringen was assessed benefits in that case?

A. No.

Q. Do you know that her property was sold out?

A. No.

Q. Did you ever know her property was sold out in 1871 and not redeemed until 1879?

A. No.

Q. Do you know it was redeemed in 1879?

A. I remember a circumstance that she had a lot of property sold out before we took charge of it, and we bought from Huntington Smith a lot of bills to redeem property.

Q. What do you mean by a lot of bills?

A. I do not know and cannot say about this unless I see the bills and refer to the books.

Q. Then if, upon referring to your books or other sources of knowledge satisfactory to you, you were to ascertain you had redeemed property in 1879, would you want to then say that you knew of no interference with the title or possession of that property since 1875?

A. I know of none now.

178 Q. Have you any memory about that?

A. No.

Q. Will you make such an examination as will determine that matter, Mr. Farrar?

A. Yes; I will if you pay me. It will take some time.

Q. Do you know where the river front was in 1875?

Mr. FARRAR: Can you indicate by that plat or any plat?

A. I would not attempt to do it. It was lying east of 2nd street. I remember walking down.

Q. You recollect the fact?

A. Yes, sir.

Q. I will ask if anybody, then—if any one has been in possession of any part of that property between the west limit of the green and the center of city block 308 and extending ninety feet wide clear down to the present front of the Mississippi river.

A. I don't know.

Q. You do not know?

A. No; Mr. Liebke had a saw-mill up in North St. Louis and had a lot of logs on it a few year- ago, and we notified him to leave and move the logs up, which *which* he did.

Q. How is that?

A. Mr. Liebke, who had a saw-mill, had a lot of logs on the property a few years ago, and we notified him to move them off, which he did.

Q. That is the only possession or change of title that you know of?

A. Yes, sir.

Mr. BELL:

Q. Where does this river front?

A. That is between the eastern street and the Wabash railroads; that is east, what you might term the levee, east of the C., B. & Q.

Mr. BELL: West of the C., B. & Q.?

A. These logs were all west of the C., B. & Q.

Q. Indicate as nearly as possible where they were.

A. From here to here.

Q. You indicate on the east of the track of the C., B. & Q. and 1st or Main street, as it is called?

A. Yes, sir.

179 Q. On the west city block 308 fronts on Main street. Now, do you mean he had his logs all the way from the river?

A. No.

COURT: Between the C., B. & Q. and 1st street?

A. Yes, sir.

Q. Indicate, as near as possible, where they were.

A. They were scattered all over.

Q. You mean the entire distance to Main street they covered?

A. The entire ground was not covered, but they were scattered.

Q. Where was Liebke's saw-mill? Do you know that?

A. That is there on Buchanan street from 1st and 2nd.

Q. And runs down Buchanan street to the river?

A. Yes, sir.

Q. You say the logs extended along or all over this property, more or less. Were — logs such as he uses in business to saw up and make lumber?

A. Yes, sir.

Q. And that continued, more or less, from 1st street clear through this tract to the C., B. & Q.?

A. Yes, sir.

Q. When was — that you first knew of that, Mr. Farrar?

A. Four or five years ago.

Q. Then you notified him?

A. Yes, sir.

Q. Have you any recollection of him having used it before that time?

A. Yes; there were logs there, but not as many. They were principally north.

Q. Can you tell how long before you have known he was on your property before four or five years ago?

A. No.

Q. You do not know?

A. No.

Redirect examination by E. P. JOHNSON, Esq.:

Q. He moved off when you notified him?

A. Yes, sir.

Q. How long had he been there?

A. A few months, I should judge.

Mr. ROBERT: How many squatters did you ever remove from the piece of land claimed by Mrs. Sweringen, the plaintiff in this case, running from the wharf line or river west?

180 WITNESS: What do you call the wharf line?

Mr. ROBERT: What is shown on plat # 2. It is indicated here by a line. This piece of the land between the east line of block 2544 on the river.

A. It would be impossible to say.

Q. Approximately.

A. I suppose half a dozen.

Q. Can you say definitely you ever removed one from that particular piece?

A. Yes, sir.

Q. When did you remove one?

A. I would say four years ago.

Q. At that time both the railroad company and Mr. Joy were in possession, were they not?

A. Yes. The squatters were down there, and we told them to move off.

Q. And, at the time you notified the squatters, you know the railroad and Mr. Joy were in possession?

A. Yes, sir.

Q. Do you recollect any other that you removed?

A. We did not have charge of the whole strip.

Q. I am limiting the inquiry to this piece described. Do you recall any other squatters you removed from that part?

A. No.

Mr. JOHNSON: Now, Mr. Farrar, do you know whether any of Mr. Liebke's logs were between the east line of block 2544 and the river?

A. I think not.

—. There is a matter I overlooked. Mr. Farrar, are you familiar with the values of property up in this neighborhood—the rental and otherwise?

A. I think so.

Q. Will you state to the court what the rental value of this piece of ground, which is about three hundred and forty or fifty feet, I believe it is, from the east line of block 2544 down to the Mississippi river—this ninety feet?

Mr. ALLEN: We object to the question on the general ground it is incompetent, irrelevant, and immaterial, and a further ground for reasons given before, and a further ground it does not fix the time.

COURT: Objection overruled.

181 To which ruling of the court the defendant then and there excepted.

Ans. I should say the property was worth six per cent. on seventy-five cents per square foot.

Q. Six per cent. on seventy-five cents per square foot?

A. Yes, sir.

Q. How much an acre?

Mr. ROBERT: That is a little over $30,000 an acre.

Q. The distance laid down on the plat is 346 feet by 90 feet. Can you give an estimate what that would be worth an acre monthly—the rental value per month?

A. $1,401.90, and taxes——

COURT: That is the annual rent?

A. The annual rent.

Mr. BELL: Divide it by twelve, so as to tell the monthly rent.

A. $116.82 per month.

Q. $116.82 per month?

A. Yes, sir.

Q. How much would it be for the past five years?

A. I think about the same.

Q. State separately what the rental value of property claimed by the C., B. & Q. would be. That includes the railroad right of way. Take fifty by ninety feet; what would be that, separate?

A. That would be worth at the same rate.

Mr. ROBERT: We do not occupy fifty feet.

Mr. JOHNSON: The plat is in evidence; it shows the right of way fifty feet wide.

COURT: Of course the reason given by Mr. Robert is good, if true.

Mr. BELL: Read it all the way to the river.

Answer by WITNESS: $16.87.

Mr. DRABELLE: We allege we occupy a part of the premises described in the petition in and by virtue of city ordinance.

Mr. BELL: That ordinance grants fifty feet.

182 Recross-examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. Do you know what Mr. Joy pays?

A. No; I do not recollect.

Q. Do you know anything about it?

A. No; I think I heard one time; I forgot what it is now.

Mr. ROBERT: Do you know of a single sale of a piece of property in that neighborhood at any such figure you have stated of your own knowledge, in the immediate neighborhood?

A. No, sir; I do not recollect. I just base my opinion on the value of the property.

Q. How do you arrive at that?

A. Seventy-five.

Q. How do you arrive at seventy-five cents; why is it not worth eighty cents?

A. That is my judgment.

Q. It is not based on any sales of the same kind of property in that neighborhood, is it?

A. No; from the general information I have.

Mr. ALLEN: You do not know of any sale, but simply express your opinion as to what it ought to be worth?

A. That is my opinion what it is worth.

Q. Don't you know that Governor Francis bought exactly the same sort of property just a few blocks north, on which railroads run, at five thousand dollars an acre, just above that—the same kind of property exactly; don't you recollect?

A. I do not recollect the figures, but they got a great bargain.

Q. Don't you know when Knapp, Stout Co. bought the piece near the stock yards they were considerably fooled and they only paid $5,000 an acre; do you know that sale?

A. I do not recollect.

Q. Don't you think those sales are a better test of value than your opinion?

A. Not always; a great many people sell cheaper than they should.

Q. In the case of the Eau Claire Lumber Company, a concern worth three millions, don't you think that is a better test of values than your opinion not based on sales?

A. You cannot always tell about sales.

183 Q. That was made we know of. They sold a piece of property extending from Hall to the river front, partially filled with a lumber yard, and the parties paid $5,000 an acre. Don't you think that is a better test what property is worth than yours, not based on any sale?

A. I do not believe it.

Mr. ROBERT: I told you it is true.

A. I do not believe it.

Q. I will state to you this as a hypothetical question: If anybody said they bought from the Eau Claire Lumber Co. some sort of property running from Hall street to the river, just a few blocks north, for five thousand dollars, is that not a better test of value of that sort of property?

A. I would say they had bad judgment.

Q. Then you think your opinion is a great deal better than the Eau Claire Lumber Co.?

A. Yes.

Q. You say they had better judgment?

A. They might have good reason for selling.

Q. Don't you think that sale is a better test of value than your opinion?

A. Not according to my idea.

Q. You think your judgment is better than theirs?

A. Yes, sir.

JOHN H. TERRY, being duly sworn on behalf of plaintiff, testified as follows:

Direct examination by E. P. JOHNSON, Esq.:

Q. State your name, please.

A. John H. Terry.

Q. Do you reside in this city?

A. Yes, sir.

Q. What is your business?

A. Real estate.

Q. How long have you been in the business?

A. Twenty years.

Q. Are you acquainted with the values of property in the neighborhood of Dock street between Dock and Buchanan streets, in this city?

A. Yes, sir.

Q. I will get you to look at this and state what is the
184 rental value of the property inclosed between the lines—the east line of block 2544 and the river.

A. The rental value is six per cent. on what it is worth.

Q. It is 346 feet by 90 feet, according to the plat. What — that amount to?

Mr. ALLEN: We object to the question as immaterial, incompetent, and irrelevant.

COURT: Objection overruled.

To which ruling of the court the defendants then and there excepted.

A. That would be 31,140 feet at—I value that property at 80 cents per foot; that would be $24,922. Six per cent. on that would be $1,495.32.

Q. You mean that much per year rental value?

A. Yes, sir.

Q. How much per month?

A. $124.60.

Q. Would that be the same value for the past five years or would you make a difference the last five years?

A. I do not think there is much difference.

Q. The strip you see marked Chicago, Burlington and Quincy, 50 by 90 feet, how much would that be separately?

Mr. ROBERT: We object on the ground it is not shown that the railroad company is in possession of any such strips, and as a matter of fact it is not.

Mr. JOHNSON: So much per square foot is a mere matter of arithmatic—simply a matter of arithmatic.

COURT: The testimony is per foot value.

Mr. ALLEN: He did not say square per foot—I mean square foot.

Mr. BELL: The other witness said 75 cents per square foot.

WITNESS: 80 cents per square foot.

Cross-examination by E. S. ROBERT, Esq.:

Q. Where is this property?

A. On the river front, between Dock and Buchanan streets.

Q. Have you known of any sales in the last five years?
185 A. I do, but I have not the papers with me. Mr. Greenwood and myself went over this, and he has the papers, but he is out of town at present.

Q. In that locality do you know of any sales, of your personal knowledge?

A. No; I do not; not on the river front. I know the property in Blackman's, and am purchasing it now.

Q. Near this?

A. Not very near. This is up on Broadway. I am familiar with that block on that account.

Q. There is a good deal of river front unoccupied, is there not?

A. Yes, sir.

Q. You do not find any tenants for it? Any such figures as that would be speculation?

A. I have my idea what it is worth.

Q. You think it is a speculative value rather than actual?

A. Property in that vicinity is in the hands of small owners, and a great many parts got into the hands of large owners, so it can be used. I am working on that now.

Q. This is about as dead property as is found in St. Louis, is it not?

A. In one sense yes, and another no. On account of it being owned by so many owners prevents handling. If it were in the hands of large owners it would be live property.

Q. Is it not a fact for almost south of the stock yards, which is the same property, there have been no sales since the St. Louis, Keokuk and Northwestern stopped buying five or six years ago?

A. I do not know of any great number of sales.

Q. After the Merchants' Terminal and the other railways stopped buying the market was flat?

A. The sales stopped.

Q. This value you give is an opinion not based on actual sales, is it not?

A. It is based on actual sales.

Q. Is it based on the sale of the Francis piece?

A. We had our memorandum from nine sales.

Q. Don't you know Governor Francis and his associates
186 bought a long strip just two blocks north of the same sort of property for less than five thousand dollars an acre?

A. It is below grade.

Q. Which of this is below grade?

A. It is not as bad. Occasionally it is below grade. It is in high water. The Francis piece is worse than this.

Q. Is not all this land low grade?

A. No.

Q. Will you name a single piece that has not been filled in, low grade?

A. That may be right. The ground along the river is higher than back of it. The water gets behind it. The land near it is not overflowed until high water.

Q. Of course this piece Mr. Johnson inquired about, which is below grade, is not troubled?

A. I do not think that is troubled by the water, except in extra high water.

Q. Is it below the water grade of the city?

A. That I do not know.

Q. When you said below grade you did not mean below city grades as established; you meant it was subject to overflow?

A. Yes, sir.

Q. Do you know the property Knapp-Stout sold, or rather that Knapp-Stout purchased?

A. Yes, sir.

Q. Is not that similar property?

A. Yes, sir.

Q. And in this same neighborhood?

A. Yes, sir.

Q. Their property is also back from the river on the front and their property is gradually being filled up?

A. Yes, sir.

Q. It was bought from the Eau Claire Lumber Co. for five thousand dollars?

A. Yes, sir.

Q. Don't you think that property better than this?

A. No doubt it is just as good.

Q. Their property is levied and this is not?

A. That is true.

Q. Do you think the fact that there is a levee makes any difference?

A. I think the levee makes it more accessible to use by
187 keeping out high water.

Q. Do you think Knapp-Stout's piece is in better condition for use than this here?

A. No; if not for the railway.

Q. Suppose the railroad was taken away, would not Knapp-Stout'- be better than this?

A. I do not see why.

Q. You do not think it would be better?

A. No.

Q. Then, in your opinion, the levee of Knapp-Stout's piece does not improve its value?

A. In high states of water the levee is a benefit, but ordinary stages it is not. There are years it never overflows at all.

Q. I will get at it this way: whether you think leveeing the property enhances its market value.

A. I think so, if the whole property was raised up in time of high water.

Q. Do you know of a single sale of river front property in that neighborhood at about five thousand dollars an acre?

A. I cannot call the date of the sale now, but I have been over them for this case, and I have not the memorandum with me and cannot give them. There is a sale to the Buck-Wright Stove Co.

Q. On the city river front?

A. It is near there.

Q. On the city river front property you do not recollect any, do you?

A. No; I do not.

Mr. ALLEN: How long have you known that property?

A. I have known that property for twenty years.

Mr. DRABELLE: Do you know what Joy is paying the city for that property?

A. No.

Mr. ALLEN: Didn't you have that in consideration in making this estimate?

A. No.

Q. You say you have known the river front up there for some twenty years?

A. Yes, sir.

Q. Do you know where the longitudinal dike is up there?

A. Yes.

Q. Do you remember when that was put in?

A. I do not remember the year.

188 Q. It has always been there since you have known it, has it not?

A. I think it has.

Q. Do you know where the old spur dike was put in—up about Destrehan street?

A. Yes; I know where it is.

Q. And the longitudinal dike is down below that?

A. Yes, sir.

Q. That extends down past this property?

A. Yes, sir.

Q. Do you know if the city put that in?

A. I do not know that as a fact.

Q. I- has been there ever since you have known it?

A. Yes, sir.

Q. You do not know just how long?

A. No, sir.

Q. Do you know the purpose of a longitudinal dike, Judge?

A. For the purpose of turning the water.

Q. Turning the water from the land?

A. Yes, sir.

Q. What effect does that have on space on ground where the water is turned?

A. If it is built high enough, it keeps water from coming in.

Q. One of the objects of longitudinal dikes is to carry deposits inside, so it will fill up?

A. Yes, sir.

Q. That is the way they make shore land and wharf land?

A. Yes, sir.

Q. You know that is the way in which the city does make shore land itself on the river front and wharf line, is it not? That is the purpose of a longitudinal dyke?

A. Yes, sir.

Mr. JOHNSON: We offer in evidence receipts containing statement of taxes for 1851, city block 308, 90 by 138 feet deep, bounded north by Tyler, east by the river, and south by Deane.

Mr. ALLEN: In whose name is that?

Mr. JOHNSON: This tax receipt is in the name of J. T. Sweringen.

Mr. ALLEN: We object to this as incompetent, irrelevant, and immaterial. It is not the property said to have been bought by plaintiff or any one for her, and it does not describe the property
189 in controversy.

COURT: It is in the name of the husband of the plaintiff.

Mr. JOHNSON: This is the husband of the plaintiff. It is 90 by 138 feet, in block 308. This is in 1851, according to the plat filed with the report of the sheriff of the sale. It exactly corresponds with the description of the sheriff's report, by which the sheriff's deed was made.

COURT: There is no dispute that this is the husband of plaintiff.

Mr. ROBERT: I think he testified to that, Mr. Barrett.

COURT: Objection overruled.

To which ruling of the court *to* defendants then and there duly excepted.

Mr. ROBERT: There is no objection to offer all at once.

Mr. ALLEN: I think they all should be offered separately, for the reason they are not all alike, and we may have some special objection to special tax bills.

Mr. ALLEN: As I understand it, we object to that on the ground it is incompetent, irrelevant, and immaterial, and tending to describe the property here in controversy. I think the general objection will raise any specific objection.

COURT: Do you object because it is not in the name of the plaintiff?

A. Mr. ALLEN: Yes, sir.

COURT: The tax receipts which cover the ground in question will be admitted if they are in the name of the plaintiff or her husband. I will take them all, subject to the objections, and you can raise points to them afterwards. Perhaps that is the easier way.

All objections were overruled; to which ruling defendants duly excepted.

Mr. JOHNSON: Tax receipts for 1851, 1852; the city for 1852; the city and county for 1853; city and county, 1855.

Mr. BELL: These were testified to by the agent this morn-
190 ing, and also Mr. Barrett.

COURT: I do not remember they went back as far as 1851.

Mr. JOHNSON: I will start over again.

He then read in evidence tax receipts, State and county, 1851; State and county, 1852; city, 1852 and 1853; State and county, 1853; State and county, 1854, two bills for that year; city, 1855; State and county, 1856; State and county, 1857; city, 1858; State and county, 1858; State and county, 1859; city, 1860; city, 1862; city, 1863; city, 1863; State and county, 1863; State and county, 1864; city, 1865; city, 1865; State and county, 1865; city, 1866; State and county, 1866; State and county and city, 1867, two of them; State, county, and city, 1868, one for 1869; State and county and city, 1870; which are as follows:

Received of J. T. Sweringen three $\frac{00}{100}$ dollars, being the amount of State, county, road, and school taxes for the year 1851, in *the* St. Louis county, on real estate, as below detailed.

Block.	Street or avenue.	Front.	Deep.	Whose addition.	North.	East.	South.	West.	Valuation.	Amount.	
308	River.	90	138	Part out of the city.	Tyler	River.	Dean.	City line	500	State tax..	1.00
										County " ..	1.25
										Add'l county.	.25
										School	.50
											$3.00

191 C. B., fo. 253.
St. Louis county, Dec. 15, 1851.

THOMAS R. AXTILL, *Collector.*

Received of J. T. Sweringen sixty-one $\frac{00}{100}$ dollars, being the amount of State, county, road, and school taxes for the year 1852, for St. Louis county, on real estate, as below detailed, including poll and personal property.

Block.	Street or avenue.	Front.	Deep.	Whose addition.	North.	East.	South.	West.	Valuation.	Amount.	
308	River.	90	138	...	Tyler..	River.	Dean..	City line	500	State tax.	$22.40
92	4th ..	37^6	89	..	Tarrar.	Alley.	Green.	4th ..	9,300	County " .	28.00
360	12th .	137^9	150	...	Marion	Dean.	Benton	12th ...	1,400	Add'l " .	5.60
										County .	
									11,200	School " .	11.20
											$67 20

JOHN SMITH,
By S. D. AXTELL,
Dept. Collector.

C. B., fo. 407.
St. Louis county, Dec. 9th, 1852.

M-. J. T. Sweringen to city of St. Louis, tax for 1852.

Block.	Street.	No. of street.	Front.	Depth.	No. of lot.	North.	East.	South.	West.	Amount. Dollars.	Cents.
308	Front ..	...	70	75	....	Tyler..	Front ..	Dean..	City limits ..	720	...
1 p'r ct.										7	20
$\frac{1}{20}$ "											36
										7	56

Rec'd payment Oct. 29th, 1852.

G. T. CHAMBERLAIN,
Col. Sixth Ward.

Mr. James T. Sweringen to city of St. Louis, tax for 1853.

Block.	Street or avenue.	Front.	Deep.	North.	East.	South.	West.	Value of lot.	Total valuation.	Amount of tax.	
308	1st..	90	75	Tyler est.	River.	Dean.	City limits.	900	900	1 per cent..	$9.00
										$\frac{1}{20}$, harbor..	.45
										Total...	$9.45

Rec'd payment, St. Louis, Oct. 15, 1853.

G. T. CHAMBERLAIN,
Collector of 6th Ward.

C. B., fo. 37.

192 Received of J. T. Sweringen one hundred seventy-seven $\frac{60}{100}$ dollars, being the amount of State, county, and school taxes for the year 1853, for St. Louis county, on real estate, as below detailed.

Block.	Street or avenue.	Front.	Deep.	Whose addition.	Lot.	Block.
21	Second	20	80			
308	River	90	138			
92	Fourth	376	89			
92	B'way	67	73			
360	Twelfth	1,379	150	N. St. Louis	289	1 & 3
295	Second	80	150	N. St. Louis	58	24
316	"	80	150		89	34

North.	East.	South.	West.	Valuation.	Amount.	
Ashley..	River to pt.	Lindell	Second	200	State tax.	$59.20
Tyler	River	Dean	City line	500	County "	88.80
Farrar	Alley	Green St.	4th	9,300	Add'l } ..	
Coxe	B'way	Self.	Alley	14,000	County }	
Marion alley	Dean	Benton St..	12th	1,400	School "	29.60
				1,900		
				1,800		$177.60
				29,600		3.00
						$174.60

St. Louis county, Dec. 15th, 1853.

JNO. BRADY SMITH,
By AXTELL, *Dept. Collector.*

76.

Received of J. T. Sweringen one hundred and eighty-nine $\frac{1}{100}$ dollars, being the amount of State, county, and school taxes for the year 1854, for St. Louis county, as below detailed.

Block.	Street or avenue.	Front.	Deep.	Whose addition.	Lot.	Block.
21	Second	20'	50'			
22	Third	67	75			
"	Fourth	37'	89			
308	First	90	150	N. St. Louis	33/35	1/2
357	Eleventh	80	75			
"	"	40	75			
360	12th St	100	150			

North.	East.	South.	West.	Valuation.	Amount.	
Ashley St...	River to point	Clark *et al.*	2nd St...	200	State tax.	$54.00
Coxe	3rd St.	Self	Alley	14,000	County "	108.00
Farrar	Alley	Green St...	4th	9,300	Add'n'l "	
Part out of	city			700	County "	
Spring St...	Self	Robinson	11th St...	950	School	27.00
Robinson...	Johnson..	Bower	"	450		
Alley	Dean	Benton Str.	12th St...	1,400		189.00
				27,000		

St. Louis county, Jan'y 9th, 1855.

JOHN BRADY SMITH, *Collector.*

Martha J. Sweringen's trust. to city of St. Louis, taxes for 1855.

(*Description.*)

Block.	Street.	Front.	Depth.	North.	East.	South.	West.	Val. of lot.	Improvement.	Total value.
308	1st	90	75	Tyler...	River.	Dean..	City line	900		900
1 per cent										$9.00
$\frac{1}{2}$ per cent										.45
Total										9.45

Paid.
St. Louis, Nov. 6, 1855.

H. GARP,
Collector of 6 *Ward.*

193 206. M. J. Sweringen's trustee.

Received of J. T. Sweringen, ag't, six $\frac{65}{100}$ dollars, being the amount of State, county, special, road, and school taxes for the year 1855, in St. Louis county, on real estate, as below detailed.

Block.	Street or avenue.	Front.	Deep.	Whose addition.	North.	East.	South.	West.	Valuation.	Amount.	
308	First.	90	to river.	N St. Louis.	Tyler	River.	Dean.	Austin.	700	State tax.	$1.40
										County "	2.80
										Special "	1.40
										Road "	.35
										School "	.70
											6.65
											4.90
											$11.55

Ent. C. B., fo. 226.
St. Louis county, Dec. 19th, 1855.

GEORGE SMIZER,
By AXTELL, *Dept. Collector.*

Ent. C. B., fo. 226.

229. Lessee of Sweringen.

Received of A. Lemon seven $\frac{60}{100}$ dollars, being the amount of State, county, road, special, and school taxes for the year 1856, in St. Louis county, on real estate, as below detailed, including poll and personal property.

Blk.	Street or avenue.	Front.	Deep.	Whose addition.	North.	East.	South.	West.	Valuation.	Amount.	
308	Main.	90	to river.	N. St. Louis.	Tyler	River.	Dean.	Austin St.	800	State tax...	$1.60
										County....	3.20
										Special	1.60
										Road	.40
										School.....	.80
											7.60
											4.00
											$11.60

Correct.
St. Louis county, Jan'y 6th, 1857.

GEORGE SMIZER,
By S. D. AXTELL,
Dept. Collector.

Received of M. J. Sweringen eight $\frac{40}{100}$ dollars, being the amount of State, county, special, road, and school taxes for the year 1857, in St. Louis
194 county, on real estate, as below detailed.

Block.	Street or avenue.	Front.	Deep.	Whose addition.	Lot.	Block.	Valuation.	Amount.	
308	1st street.	90	138	N. St. Louis.	30 to 32	..	900	State tax	1.80
								County "	3.60
								Special	1.80
								Road	.45
								School "	.90
									8.55
									9.30

C. B., fo. 106.
St. Louis county, Dec. 1st, 1857.

JAMES McDONOUGH,
By S. D. AXTELL,
Dept. Collector.

Mr. Isaac Sweringen to city of St. Louis, taxes for 1858.

(*Description.*)

Block.	Street or avenue.	Front.	Deep.	North.	East.	South.	West.	Valuation of lot.	Improvements.	Total value.
308	1st St.	90	138	Tyler.	1st St...	Dean...	City line..	3,600	... .	3,600
									1 per cent. ..	36
									$\frac{1}{2}$ per cent..	1.80
									Total	37.80

C. B., fo. 60.
St. Louis, October 23, 1857.
Received payment,

C. F. GLEESON,
Collector of 10th Ward,
By JAS. WALKER,
Deputy Co.

808.

Received of Andrew Lemmon, lessee of M. J. Sweringen, twelve $\frac{17}{100}$ dollars, being the amount of State, county, special, road, school, jury, and asylum taxes for the year 1858, in St. Louis county, on real estate, as below detailed.

City block.	Street or avenue.	Front.	Deep.	Lot.	North.	East.	South.	West.	Valuation.		Dollars.	Cts.
308 E.	Pro. N. 1st St.	90	138	33 to 35	Tyler.	River.	Dean.	Self *et al.*	1,000	State tax. ..	2	00
										County "	4	00
										Special "	4	00
										Road "		50
										School "	1	00
										Jury "		50
										Asylum		17
											12	17

185, C.
C. B., fo. 83.

195 St. Louis county, Jan'y 22d, 1859.

JAMES McDONOUGH,
By S. D. AXTELL,
Dept. Collector.

11216.

Received of M. J. Sweringen, Henry Overstoltz & Co., lessee-, nine $\frac{80}{100}$ dollars, being the amount of State, county, school, and asylum taxes for the year 1859, in St. Louis county, on real estate, as below detailed.

City block.	Street or avenue.	Front.	Deep.	Whose addition.	Lot.	Block.	Valuation.		Dolls.	Cts.
308 E.	N. Main St.	30	138	N. St. Louis	33	12	360	State tax, $\frac{1}{5}$...	2.16	
308 E.	Do.	30	138	"	34	12	360	County " $\frac{1}{2}$...	5.40	
308 E.	Do.	30	..	"	35	12	360	Special State....	1.08	
								School, $\frac{1}{10}$..	1.08	
							1,080	Asylum, $\frac{1}{10}$.....	.18	
									9.90	
									2.70	
									$12.60	

C.; C. B, fo. 160.
St. Louis county, Dec. 27, 1859.

JAS. McDONOUGH,
P'r GILPIN, *Dpty. Collector.*

M-. Martha J. Sweringen (Andrew Lemmon, less.) to city of St. Louis, tax for 1860.

Block.	Street or avenue.	Front.	Deep.	North.	East.	South.	West.	Total value.
East 308	First	90	120	Reis *et al.*	1st street	Dean	N. E. line	*Dollars. Cents.* Valuation of lot..... 27.00 Total value.. 27.00 General tax. 27 Harbor tax.. 1 35 Sewer tax... 2 70 Total taxes 31 05

C. B., fo. 18.
City assessor's office, St. Louis, Mo.
St. Louis, Aug. 15th, 1860.
Rec'd pay't,

D. H. MOONEY,
Dep. Collector of 10th Ward.

M. J. Sweringen—A. Lemmon, less.—to city of St. Louis, tax for 1862.

196 *Description.*

City block.	Street or avenue.	Front.	Depth.	Addition.	Lot.	North.	South.	East.	West.
E. 308	First ..	90	104	.....	33/35	Schmidt ...	Dean ..	First ..	Reis.

	Dollars.	Cents.
Valuation of real estate	1,260	.....
" " improvements	.....	.....
" " personal property	.....	.....
Total valuation	1,2 0	.....
General tax	12	60
Harbor tax	.....	.....
Sewer tax	.....	63
Poll tax	.....	.....
Amount of bill	13	23

C. B., fo. 206.
City assessor's office, St Louis, Mo.
St. Louis, 30th Aug., 1862.
Rec'd payment,

HENRY KNOWLES,
Collector of 10th Ward.

Martha I. Sweringen (Andrew Lemmon, less.) to city of St. Louis, taxes for 1863.

Description.					Boundaries.			
City block.	Street or avenue.	Front.	Deep.	Lot.	North.	East.	South.	West.
308 E.	First ..	90	104'	30/35	Fahner....	First St....	Dean	Reis.

		Dollars.	Cents.
	Valuation of real estate	1,260	00
	" " improvements	200	00
	" " personal property	.....	.....
$16.06			
1.17	Total valuation	1,460	00
$17.23	General tax	14	60
	Sewer tax	1	46
	Poll tax	.....	.....
	Amount of bill	16	06

C. B., fo. 302.
City assessor's office, St. Louis, Mo.
St. Louis, July 31st, 1863.
Rec'd payment,

HENRY KNOWLES,
Collector of 10th Ward.

Extended New Limits.

M. I. Sweringen—Lemmon, lessee—to city of St. Louis, tax for 1863.

Description.					Boundaries.			
City block.	Street or avenue.	Front.	Depth.	Lot.	North.	East.	South.	West.
308 E.	1st.	90	79	33/35	Fahner...	E. N. limits..	Dean ...	Austin.

		Dollars.	Cents.
	Valuation of real estate	.....	.....
	" " improvements	.....	.....
	" " personal property	.....	.....
$1.17			
16.06	Total valuation	270	00
$17.23	General tax	.....	90
	Sewer tax ..	.....	27
	Amount of bill	1	17

C. B., fo. 302.
City assessor's office, St. Louis, Mo.
197 St. Louis, July 31st, 1863.
Rec'd payment,

HENRY KNOWLES,
Collector of 10th Ward.

198.

Received of Henry Overstolz, lessee of M. I. Sweringen, three $\frac{30}{100}$ dollars, being the amount of State, county, and school taxes for the year 1863, in St. Louis county, on real estate, as below detailed, including poll and personal property.

City block.	Street or avenue.	Front.	Deep.	Whose addition.	Lot.	Block.	Valuation.		Dolls.	Cts.
308 E.	Main St.	30	120	N. St. Louis	33	12	150	State poll tax		
308 E.	" "	30	120	"	34	12	150	Mil't'y poll tax		
308 E.	" "	30	120	"	35	12	150	Military tax, $\frac{1}{2}$		90
								State tax, $\frac{22}{100}$	1	44
							450	County tax, $\frac{1}{4}$	1	13
								School tax, $\frac{7}{10}$		45
									3	92
								R. R.	2	25
							•		6	17

C. B., fo. 230.

137
450

6850
548

616.50

St. Louis county, Dec. 12, 1863.

WM. H. MAURICE, *Collector.*
J. HARRISON.

196.

Received of M. I. Sweringen, tr. (Henry Overstolz, lessee), four $\frac{40}{100}$ dollars, being the amount of State, county, and school taxes for the year 1864, in St. Louis county, on real estate, as below detailed, including polls and personal property.

City block.	Street or avenue.	Front.	Deep.	Whose addition.	Lot.	Block.	Valuation.		Dolls.	Cts.
308 E	Main	30	124	N. St. Louis	33	12	150	State military poll tax		
308 E.	"	30	124	"	34	12	150	State military tax, $\frac{2}{3}$ ..	1	80
308 E.	"	30	124	"	35	12	150	County tax, $\frac{2}{3}$	1	80
							---	School tax, $\frac{1}{5}$		90
							450		4	50
									2	25
									6	75

C. B., fo. 12.
St. Louis county, Dec. 30, 1864.

WM. H. MAURICE, *Collector,*
Per C. ANDEL.

198 *Extended New Limits.*

Martha J. Sweringen to the city of St. Louis, taxes for 1865.

Description.						Boundaries.			
City block.	Street.	Feet front.	Feet deep.	Lot Nos.		North.	East.	South.	West.
308 E.	1st ..	90	79	33–35	.....	Fahner.	Ex. N. limits.	Dean ...	Austin *et al.*

	Dollars.	Cents.
Valuation of real estate.....	360	00
Total valuation.....	360	00
General tax, ½ of 1 per cent.	1	20
Wharf & harbor tax, $\frac{1}{10}$ of 1 per cent.	...	36
Sewer tax, $\frac{1}{10}$ of 1 per cent.....	.....	36
Police tax, ½ of 1 per cent.....	.....	51
Amount of tax bill	$2	43

C. B., fo. 50, original.
City assessor's office, St. Louis, Mo.
St. Louis, July 29th, 1865.

J. ROSENBAUM,
Collector of the 10th Ward.

Martha J. Sweringen to the city of St. Louis, taxes for 1865.

Description.							Boundaries.			
City block.	Street.	Feet front.	Feet deep.	Lot Nos.			North.	East.	South.	West.
308 E.	First.	90	150	...	.....	..	Fahner..	1st St. ...	Dean....	Austin *et al.*

	Dollars.	Cents.
Valuation of real estate...	1,620	00
Total valuation.....	1,620	00
General tax, 1 per cent.....	16	20
Harbor & wharf tax, $\frac{1}{10}$ of 1 %.....	1	62
Sewer tax, $\frac{1}{10}$ of 1 per cent.	1	62
Police tax, $\frac{1}{10}$ of 1 per cent.	2	31
Amount of tax bill	21	75

C. B., fo. 56, original.
City assessor's office, St. Louis, Mo.
St. Louis, July 29th, 1865.
Received payment,

S. ROSENBAUM,
Collector of the 10th Ward.

Received of M. J. Sweringen—H'y Overstolz, lessee—five & $\frac{55}{100}$ dollars, being the amount of State, county, and school taxes for the year 1865, in St. Louis county, on real estate, as below detailed.

City block.	Street or avenue.	Front.	Deep.	Whose addition.	Block.	Lot.	Valuation.		
									Dolls. Cts.
308 E.	Main..	30	224^{10}	N. St. Louis.	12	33	120	State and military poll	
308 E.	" ..	30	224^{10}	Do.	12	34	120	tax.....	
308 E.	" .	30	224^{10}	Do.	12	35	120	State & military tax, $\frac{2}{5}$.	2 16
								County tax, $\frac{1}{5}$.....	1 20
							360	Bounty tax, $\frac{1}{5}$	1 20
								School tax, $\frac{1}{5}$...	72
									5 28

C. B., fo. 80.
199 St. Louis county, Dec. 15, 1865.

J. H. LIGHTNER, *Collector*,
By W. H. LYMAN.

Old Limits.

Martha J. Sweringen to the city of St. Louis, taxes for 1866.

City block.	Street.	Feet front.	Feet deep.	Lot Nos.	North.	East.	South.	West.
				Pts.				
E. 308	First.	90	150*a*	33–35	Fahner *et al*..	1st Str..	Dean..	Austin *et al.*

	Dollars.	Cents.
Valuation of real estate	1,800	00
" " improvements.....	.....	.....
" " personal property.....	.....	.....
Total valuation.....	$1,800	00
General tax, 1 per cent.....	18	00
Wharf & harbor tax, $\frac{1}{10}$ of 1 %.....	1	80
Sewer tax, $\frac{1}{20}$ of 1 per cent.....	0	90
Police tax, $\frac{1}{4}$ of 1 per cent.....	4	50
Amount of tax bill.....	25	20

Original.
Assessor's office of St. Louis, Missouri.
C. B., fo. 122.
St. Louis, July 31, 1866.
Received payment,

L. ROSENBAUM,
Collector of the 10 *Ward.*

New Limits.

Martha J. Sweringen to the city of St. Louis, taxes for 1866.

Description.					Boundaries.			
City block.	Street.	Feet front.	Feet deep.	Lot Nos.	North.	East.	South.	West.
E. 308	No front	90	79 av.	2nd 33-5	Schmidt...	Self...	Dean..	Austin *et al.*

	Dollars.	Cents.
Valuation of real estate.....	900	.....
Total valuation.....	$900	.....
General tax, ¾ of 1 per cent.	6	75
Harbor & wharf tax, 1/10 of 1 %.....	.....	90
Sewer tax, 1/20 of 1 per cent.....	.....	45
Police tax, ¼ of 1 per cent	2	25
Amount of tax bill.....	$10	35

Original.
Assessor's office of St. Louis, Missouri.
C. B., fo. 122.
St. Louis, July 31, 1866.
Received payment,

S. ROSENBAUM,
Collector of the 10th Ward.

City Book 8, bill 2981.

200 *State, County, City, and School Taxes for* 1868.

Received of Martha J. Sweringen—A. B. Barrett, ag't—seventeen hundred and eighty-eight 3/10 dollars, being the amount of State, county, and school taxes for the year 1868, in St. Louis county, on real estate, as below detailed, including polls and personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.
21	2nd.....	2½ to a pt.	86	.....	.....	.....
92	Broadway.....	226	644	.....	.....	.....
92	Do.	67	70	.....	.....	.....
92	4th.....	376	89	.....	.....	.....
92	Alley	10	18	.....	.....	.....
308 E.	Main	30	224	N. St. Louis....	12	34
308 E.	Do.	30	224	Do.	12	35
319	Broadway.....	40	150	Do.	31	118 S. ½
350	11th.....	63/46[100]	150	Do.	66	367
835	Washingt. Ave...	25 4½	150	P. Lindell's est...	.....	1

North.	East.	South.	West.
Ashley St.	To a pt	Collins	2nd St.
Self.	Br'dw'y	Self.	Self.
Pendleton	Do.	Do.	Alley.
Farrar	Alley	Green St.	4th St.
Self.	Self.	Self.	Alley.

Specified valuation.	Designation of taxes.	Aggregate of assessed taxes.	Amount of taxes.	
			Dolls.	*Cts.*
610	Polls: No			
7,250	State revenue, .025; int., .025; total,			
21,760	.050 p. c.	62,750	313	75
222,750	Exempt from county, school, and			
200	city tax			
150	Subject to county, school, and city			
150	tax	62,750		
2,920	County taxes, 0.60 p. c.		376	50
2,520	School taxes, 0.70 p. c.		251	00
4,440	Special exemption for city			
Total... 62,750	City general, 1.00; police, 0.20 p. c.; harbor, 0.05; sewer, 0.10; total, 1.35 p. c.		847	125
	Lafayette Park taxes, 0.10 p. c			
	0.20 p. c.			
	Total		1,788	375

Block	21	17	385
"	92	206	625
"	92	620	16
"	92	648	375
"	92	5	70
"	308 E.	4	275
"	308 E.	4	275
"	319	8	322
"	835	126	54
	Total	$1,788	373

201

BENJ. CHARLES, *Collector*,
By H. W. LYNANE, *Deputy*.

St. Louis county, Dec. 21, 1860.

Received of Matilda J. Sweringen—Arthur B. Barrett, ag't—one thousand six hundred and thirty-seven $\frac{42}{100}$ dollars, being the amount of State, county, and school taxes for the year 1866, in St. Louis county, on real estate, as below detailed, including personal property.

City block.	Street or avenue.	Front.	Deep.	Block.	Lot.
21	2nd	20 to a pt.	86		
92	Broadway	226	644		
92	Do.	67	70		
92	4th	376	89		
96	Do.	40	90		
124	6th	176			
170	Green	226	76	N. St. Louis.	
92	Alley	10	76	N. St. Louis.	
308 E.	Main	30	18	N. St. Louis.	1233
308 E.	Do.	30	224″	"	13-24
308 E.	Do.	30	224″	Do.	12-35
308 N.	Broadway	1,065	224″		
308 N.	2nd	50	118″		S. ½
308 W.	Buchanan	534	128″	N. St. Louis.	
319	Broadway	36-40	150	N. St. Louis.	31-118
358	11th	10	150	Do.	66-367
936	Morgan	163	1,447		
938	Christy avenue	163	1,447		
944	Morgan	30	1,447	New Bill.	

North.	East.	South.	West.
Ashley st	To a pt.	Collins St.	2nd.
Self	Bdwy.	Self	Self.
Pendleton	Do.	Do.	Alley.
Farrars	All-y	Green St	4th.
Green st	4th	Moreland	Holmes.
Moody	6th	Block	Alley.
Green	Moore	Walker	Ganzhorn.
Sweringen		Krieger, lessee	Alley.
S. Buchanan	Self	Self	
Self	2nd	Oberfeld	
Buchanan		Self	Broadway.
New Bill.			Oberfield.
			Self
Alley	Schuchman	Morgan st.	24th.
Do.	Ward, lessee	Christy av	23rd
Do.		Morgan st.	McAu—.

Valuation.			Dolls.	Cts.
	610	State and military tax, $\frac{9}{10}$	922	23
	7,700	County tax, $\frac{4}{10}$	408	68
	23,100	School tax	306	51
	22,750			
	19,080		1,637	42
	2,530	Monohan		
	2,750	Watt		
	200	Newcome		
	120			
	120	305.28 Monohan.		
	120	40.48 Watt.		
		44.00		
	2,450	389.76		
202	500			
	530	Paid, fo. 148.		
	2,900			
	1,390			
	6,650			
	5,710			
	2,000			
Personal	1,260			
Total State	104,900			
	1,420			
		300		
Exempt from Co. tax	103,480			
	1,010			
	102,470			

St. Louis county, Jan. 12, 1867.

J. H. LIGHTNER, *Collector*,
Per GOULD.

City Book 8, bill 2908.

New limits of 12 ward.

State, County, City, and School Taxes for 1867.

Received of Martha J. Sweringen—Arthur J. Barret, ag't—ninety-eight $\frac{1}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1867, in St. Louis county, on real estate, as below detailed, including poll and personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.
308 E.	Main	30	224^{10}	N. St. Louis	12	33
308 W.	Broadway	106^{5}	118^{4}			
308 W.	2nd	50	128^{4}			
308 W.	Buchanan	534	106^{5}			

North.	East.	South.	West.
Self	2nd	Self *et al*	Oberfel. [Broadway.][3]
Buchanan St	Self	Self *et al*	Broadway.
Buchanan St	Meyer, lessee	Self	Self.

Specified valuation.	Designation of taxes.	Aggregated assessed values.	Amount of taxes.	
203			*Dolls.*	*Cts.*
150	State revenue. ... 0.25 p. c., polls.			
2,450	State interest..... 0.40 p. c.			
500				
530	Total..... 0.65 p. c.....	3,630	23	95[1]
Total ... 3,630	Subject to county, school, & city tax.	3,630	.....	...
	County taxes, 0.50 p. c.....	.....	18	15
	School tax, 0.40 p. c.....	....	14	52
	Total city, 1.15 p. c.....	3,630	41	74[1]
	Total	.....	98	01

[[1] Word enclosed in brackets erased in copy.]

County auditor's office, St. Louis county, 1867.
C. B., fo. 216.

St. Louis county, Jan'y 4, 1868. E. S. ROWSE, *Collector.*

City Book 8, bill 2981, 6.

New limits of 12th ward.

State, County, City, and School Taxes for 1868.

Received of Martha J. Sweringen ninety-four $\frac{11}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1868, in St. Louis county, on real estate, as below detailed, including polls and personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.
308 E.	Main.....	30	224[11]	N. St. Louis.	12	33
308 W.	Broadway	106[5]	118[4]	....	.....	.....
308 W.	2nd St.....	50	128[7]	[SEAL.]	.....	.....
308 W.	Buchanan.....	534	106[5]	....	.....	.....

North	East.	South.	West.
Buchanan	Self.....	Oberfel.....	Bro'w'y.
Self.....	2nd St.....	Do.	Oberfel.
Buchanan St.....	Self.....	Self.....	Self

Specified valuation.	Designation of taxes.	Aggregated assessed values.	Amount of taxes.	
204			*Dolls.*	*Cts.*
150	Revenue, 0.25; int., 0.25; total, 0.50			
2,450	p. c.....	3,630	18	15
500	Subject to county, school, & city tax.	3,630	.....	...
530	County taxes, 0.60 p. c.....	.....	21	78
Total .. 3,630	School taxes, 0.40 p. c.....	.....	14	52
	Harbor, 0.05; sewer, 0.10; total, 1.10			
	p. c.....	.....	39	93
	Block 308 E., 3.90.			
	Total	.....	94	38

County auditor's office, St. Louis, Mo.

Block 308 E.	3.90
" 308 W.	63.70
" 308 W.	13.00
" 308 W.	13.78
Total	94.38

St. Louis county, Dec. 21, 1868.

BENJ. CHARLES, *Collector*,
By W. H. LYMAN, *Deputy*.

City Book 16, bill 1588.

State, County, City, and School Taxes for 1869.

Received of Martha J. Sweringen two thousand and eighty-nine $\frac{125}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1869, in St. Louis county, on real estate, as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.
21	2nd St.	$20\frac{2-2}{6}$	86			
92	Broadway	226	644			
92	Do.	67	70			
92	4th St.	376	89			
92	Alley	10	18			
[292]*	[Main St.]*	[80]*	[150]*	[N. St. Louis.]*	[27]*	[47]*
[292]*	[2nd St.]*	[80]*	[150]*	Do.	[27]*	[50]*
205						
308 E.	Main St.	30	224′′	Do.	12	34
308 W.	Buchanan St.	534	1,065	Do.	12	35
319	Broadway	40	150	N. St. Louis	31	118 S. $\frac{1}{2}$
358	11th St.	63/46[10]	150 $11\frac{1}{2}$	N. St. Louis	66	367
607	Broadway	19[6] $4\frac{1}{2}$	93			
835	Washington Ave.	25	150	P. Lindell's		1

North.	East.	South.	West.
Ashley St.	To a point	Collins	2nd St.
Self.	Broadway	Self.	Self.
Pendleton	Do.	Do.	Alley.
Farrar	Alley.	Green St.	4th St.
Self.	Self.	Self.	Alley.
8 New Bill			
Buchanan St.	Self.	Self.	Self & Plake.
Reber	Broadway	Harvey	7th St.

[* Words and figures enclosed in brackets erased in copy.]

Specified values.	Designation of taxes.	Aggregate of assessed value.	Amount of taxes.	
			Dolls.	*Cts.*
600	State revenue, 0.25 p. c.....	.....	.....	.....
6,130	" interest, 0.25 p. c.....	67,000	335	00
18,410				
26,880	Total... 0.50 p. c.....	73,550	[367]*	[75]*
200	Exempt from county, city, school			
[3,650]*	taxes.	300		
[2,900]*	Subject to county, city, and			
[150]*	school tax.....	73,250	300	15
150	County taxes, 0.45 p. c.....	66,700	[329]*	[625]*
530	School taxes, 0.40 p. c	.....	[293]*	[00]*
2,930	Special exemption for city.....	.....	266	80
2,520	City, general, police, harbor,			
1,460	sewer; total, 15 p. c	.....	1,098	75
4,690	Lafayette Park taxes, 0.10 p. c..	.....	1,000	50
Personal.. 2,350	Do. do. do. 0.20 p. c..	.....	.....	.....
			[2,089]*	[12*]*
73,550				
6,550	Total.....	.....	1,902	45
Total..... 67,000				

[* Figures enclosed in brackets erased in copy.]

206 County auditor's office, St. Louis county, Dec. 28, 1869.
Fo. 334.

M. M. HARRIS, *Collector*,
By J. C. MARQUIS, *Deputy*.

City Book 16, bill 1664c.

New limits of 12th ward.

State, County, City, and School Taxes for 1870.

Received of Martha J. Sweringen ninety-two $\frac{12}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1870, in St. Louis county, on real estate, as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Survey or addition.	Block.	Lot.
308 E.	Main.....	30	224^{10}	N. St. Louis...	12	33
308 W.	Broadway	76^{5}	118^{4}	.....	.....	.....
308 W.	Buchanan	53^{4}	106^{5}	.....	.....	.....

North.	East.	South.	West.
Buchanan St.....	Self..	Hart.....	Broadway.
Do.	Meyer, lessee.....	Self.....	Self & Plake.

Specified valuation.	Designation — taxes.	Aggregate of assessed value.	Amount of taxes.	
			Dolls.	*Cts.*
240	State revenue ..... 0.25 p. c.			
2,520	State interest..... ..... 0.25 p. c.			
530				
Total 3,290	Total ... . 0.50 p. c.	3,290	16	45
	Exempt from county, school, and city tax	.....	....	....
	Subject to county, school, and city tax .	3,290	.....	....
	County taxes, p. c. 0.40.....	....	13	16
	School tax, p. c. 0.40..... .. .	.....	13	16
	Special exemption for city	.....	....	....
	General city, police, harbor, sewer—total, 1.50 p. c.	....	49	35
	Lafayette Park taxes, 0.10 p. c.....	.. ..	.....	....
	" " " 0.20 p. c.....	.....	.....	....
	Total	.....	92	12
240	2520 2.80 .... $70.56			
280	240 " 6.72			
530	..... 14.84			
19200	92.12			
480				
1.7200				
530				
280				
42400				
1060				
148400				
C., block 400.				

207 St. Louis county, Dec. 20, 1870.

C. MAGUIRE, *Collector*,
By J. C. MARGUIS, *Deputy*.

Mr. ROBERT: We ask for the receipts from 1870 down. We ask that they all be produced. Mr. Farrar testified all were paid.

Mr. BELL: Let them offer them. We cannot be compelled to introduce evidence.

Mr. ROBERT: We ask them to produce them and submit them for our inspection.

Mr. BELL: Whether we offer them or not is our business.

Mr. ALLEN: We ask for their production.

Mr. BELL: There is the record.

COURT: I do not think I have any right to order them to produce them, but if you want them there is a way to get them.

Mr. ALLEN: I understand you refuse to produce them?

Mr. BELL: We are conducting this case according to our own notions. When we introduce testimony it is time enough to object.

Mr. ALLEN: I am not referring to the introduction of evidence; but as they are original papers, I ask whether counsel will produce them in order to lay the foundation of that evidence.

Mr. ROBERT: I will ask your honor to make an order for the tax receipts from 1870 down.

COURT: I have no authority to make the order at this stage of the proceeding.

Mr. ROBERT: I will ask leave to present a petition a little later, as will undoubtedly appear to compel them to produce them. If you insist in putting it in writing, I will have to do that.

Mr. ROBERT: We ask leave to prepare and present an order a little later.

No further evidence offered by the plaintiff at this stage.

Plaintiff rested; whereupon each of the defendants offered an instruction as follows:

208 In the Circuit Court, City of St. Louis.

MARTHA J. SWERINGEN, Plaintiff,
vs.
THE CITY OF ST. LOUIS ET AL., Def'ts.

The court declares the law to be that under the law and the evidence the plaintiff cannot recover.

Which instruction was refused by the court; to which ruling and action of the court in refusing said instruction the defendants then and there duly excepted at the time.

The defendants, to maintain the issues on their part, introduced the following evidence:

Mr. DRABELLE: The first evidence we offer to introduce is the survey 2402, the survey immediately north of Rocky branch.

COURT: What is the number of that survey?

A. 2042. We first show the chain of title of the survey immediately north of Rocky branch.

Mr. BELL: We object to that. What has that to do with this land; we are not suing for any land in this survey.

COURT: On what theory do you offer it, Mr. Drabelle?

A. On the theory that they have no title to this——

Mr. ROBERT: If you project the northern line it does not include this property in controversy. Our contention is it is not an accretion to their property at all, and for that reason we want to show that title to the survey just north of it.

COURT: Objection overruled.

Mr. DRABELLE: We have not thought it necessary to bring the books. I propose by reference to pages and books.

Mr. BELL: We cannot try the case this way.

Mr. DRABELLE: We first offer in evidence the patent from the United States to Rufus Easton, dated May 1st, 1826, recorded in volume 5, page 242, of the records of the General Land Office.

209 Withdrawn and offered page 133.

Mr. BELL: We want to see the documents.

Mr. ROBERT: We will offer all we want first, and then you may see the documents.

Mr. BELL: If you offer a document let us see it. That is the only way to try the case.

COURT: Bring on the books.

Mr. DRABELLE: We offer this in evidence first.

Mr. BELL: I would like to look at it.

COURT: From whom to whom is that?

Mr. DRABELLE: From Rufus Eastus and wife to Matthew Kerr.

Mr. BELL: We object to this.

Mr. DRABELLE: This is a deed made on the 13th day of July, in 1820, between Rufus Easton and wife, of the city of St. Louis, and Matthew Kerr, of the same place.

Mr. BELL: We object to this. Our objection is that it is not shown that Rufus Easton has any title to the farm, and therefore it is entirely irrelevant that he attempted to convey the farm to Matthew Kerr, and that farm does not touch the premises in controversy here in any manner.

Here the court asked for a statement of the defense in this case.

Mr. DRABELLE: We offer Book I, on *Book I* page 345, commencing on page- 345, 346, and 347.

Said deed was read, and is as follows:

This deed made this thirteenth day of July in the year of our Lord one thousand eight hundred and twenty, witnesseth: That Rufus Easton and Abial Easton of the town of St. Louis in the county of St. Louis and Territory of Missouri for and in consideration of four hundred sixty-four dollars to them in hand paid by Matthew Kerr of the same place the receipt whereof the said Rufus Easton and Abial Easton do hereby acknowledge, do grant, bargain and sell unto the said Matthew Kerr his heirs and assigns
210 forever all that certain piece or parcel of land situate lying and being near the town of St. Louis aforesaid being part of the Fountain farm so called and containing nine arpens, twenty-eight-hundre-ths of an arpen, and is known and described on a plat of said Fountain farm as lot number one and is bounded and described as follows, beginning on the southwest corner of lot number two on said farm or tract and runs thence north sixty-eight degrees east to the Mississippi river, thence along the Mississippi to the Rocky branch, thence along the Rocky branch to a point on said branch where a line commencing at a cedar post standing on the northwest corner of a tract or part of said farm containing twelve arpens and eighty-two-hundre-ths of an arpen and sold by said Rufus Easton to Victor Habb and running thence north sixty-eight degrees and shall intersect said Rocky branch thence south sixty-eight degrees west along the line of said Habb to the said cedar post, thence north twenty-one degrees west to the said southwest corner of lot number two as will appear by a plat of said lands on this deed. To have and to hold the above granted and described premises with the appurtenances unto the said Matthew Kerr, his heirs, and assigns, forever and for the consideration above men-

tioned the said Rufus Easton Abiel Easton and their heirs covenant with the said Matthew Kerr his heirs and assigns the title to the above granted and described premises to warrant and defend against the claims and demands of all persons whomsoever unto the said Matthew Kerr his heirs and assigns forever.

In witness whereof the said Rufus Easton and Abiel Easton do hereunto set their hands and seals the day and year first above written.

RUFUS EASTON. [SEAL.]
ABIEL EASTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
DAVID G. BATES.
NATH'L SOLBURN.

211 TERRITORY OF MISSOURI, } ss:
County of St. Louis, }

Personally appeared before the undersigned, a justice of the peace in and for the county of St. Louis, on the twentieth day of July, in the year eighteen hundred and twenty, the within and above-named Rufus Easton and Abiel, his wife, and acknowledged that they sealed, delivered, and executed the foregoing conveyance as their voluntary act and deed for the purpose therein named; and the said Abiel Easton, being by me examined separately and apart from her said husband, doth make her free and voluntary acknowledgment that she is well acquainted with the contents of the said deed and executed the same free from the compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and seal this twentieth day of July, 1820.

J. V. GARNIER, *J. P.* [SEAL.]

Know all men by these presents, that I Wilson P. Hunt of the county of St. Louis in the Territory of Missouri have and hold a mortgage upon the tract of land described in the within deed executed by Rufus Easton and his wife to me bearing date the second day of July, one thousand eight hundred and eighteen. And I also have obtained a judgment against the said Rufus Easton in the circuit court of the county of St. Louis aforesaid on the twentieth day of April, one thousand eight hundred and twenty for the sum of six thousand four hundred and sixty-two dollars and ten cents debt and costs.

Therefore for and in consideration that the sum of four hundred sixty-four dollars the consideration money mentioned in the within deed of conveyance has been paid to me by the within-named
212 Matthew Kerr in part satisfaction of the said mortgage and judgment above mentioned I do assign release and forever quitclaim unto the said Matthew Kerr all my right, title, claim interest and property in and to the tract of land described in the within deed of conveyance from the said Rufus Easton and wife

to the said Mathew Kerr. To have and to hold the said premises hereby granted with the appurtenances unto him the said Mathew Kerr, his heirs and assigns forever.

In witness whereof, I do hereunto set my hand and seal this twentieth day of July in the year one thousand eight hundred and twenty.

WILSON P. HUNT. [SEAL.]

Signed, sealed, and delivered in presence of—
RALPH GUILD.

COUNTY OF ST. LOUIS, *ss:*

Personally appeared before me, a justice of the peace of the county aforesaid, Wilson P. Hunt, who acknowledged the foregoing instrument of writing to be his act and deed for the purposes therein named.

Given under my hand and seal this 20th day of July, 1820.

J. V. GARNIER, *J. P.* [SEAL.]

213 (Here follows diagram marked p. 213.)

Recorded this 7th of August, 1820.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Rufus Easton and wife to Matthew Kerr, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book I, page 345.

In witness whereof I have hereunto set my hand and official seal this 3rd day of March, A. D. 1897.

[SEAL.] M. D. LEWIS, *Recorder.*

214 Mr. BELL: You offer the whole instrument?

Mr. DRABELLE: Yes.

Mr. DRABELLE: The next book is 12, page 570, Matthew Kerr and wife to Andrew Buchanan. This deed is dated September 4th, 1839.

Said deed was read and is as follows:

This indenture made this twenty-fourth day of September in the year eighteen hundred and thirty-nine between Matthew Kerr and Hannah S. his wife of the first part and Andrew Buchanan of the second part witnesseth: That the said parties of the first part in consideration of the sum of six thousand and twenty-three dollars and forty cents, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents, grant, bargain, sell, and convey unto the said Buchanan a cer-

No 470
Surveyed by Z. W.
St Louis

Examin[d] Scale 10 chains to the inch

tain tract or parcel of land situate in the county of St. Louis on the waters of the Mississippi river being a part of the tract called the Fountain farm bounded and described as follows: Begin at a post set in the Belle Fountain road the northwest corner of the tract from which a red oak twelve inches in diameter bears south 52½ E. fifty-two and one-fourth links distant thence north sixty-eight and three-fourths east twenty-six chains and forty-six links along the boundary line on the southeast of the tract heretofore conveyed to Carsten and Anglerodt to the Mississippi river the northeast corner of the tract thence meandering down said river and bounded east by it south 9¼ nine and one-half degrees west three chains south eight and one-half west, seven chains and forty links to the Rocky branch so called thence up along the middle of said branch as it meanders to Hob's lower corner on said branch, thence south sixty-eight and three-fourths degrees west, along Hob's and Idlet's line ten chains and forty-six links to the southwest corner of this tract in the Bellefountaine road at a point four links westward from Idlet's high gate post, thence along the said road north twenty degrees ten minutes west seven chains eight one-
215 half links to the beginning containing seventeen acres and eight one-hundre-ths of an acre. Bounded on the north by Carstens and Anglerodt east by the Mississippi river south by the Rocky run and Hab and Idlet's line and west by the Bellefountaine road. To have and to hold the above-described premises together with all the privileges and appurtenances thereunto belonging unto him the said Buchanan and to his heirs and assigns forever, said tract containing twenty arpents and seventy-eight-thousandths of an arpent, and the said Kerr for himself his heirs executors and administrators hereby covenants and *and* agrees with the said Buchanan his representatives and assigns, that the said Kerr will and his heirs, executors and administrators shall forever warrant and defend the above-described premises against the lawful claims of all persons whatsoever now claiming or hereafter to claim the same either in law or in equity.

In testimony whereof the said parties have hereunto set their hands and seals on the day and year first above written.

MATTHEW KERR. [SEAL.]
HANNAH S. KERR. [SEAL.]

Signed, sealed, and delivered in presence of—
ELIHU H. SHEPARD.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and thirty-nine, before the undersigned, a justice of the peace within and for the county and State aforesaid, personally came Matthew Kerr and Hannah S. Kerr, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and they severally

acknowledged the same to be their act and deed for the pur-
216 poses therein mentioned. She, the said Hannah S. Kerr, being by me first made acquainted with the contents thereof, acknowledged, on an examination separate and apart from her said husband, that she executed the said deed and relinquishes her dower in the real estate therein mentioned freely, voluntarily, and without the undue influence of her said husband.

Taken and certified the day and year aforesaid.

ELIHU H. SHEPARD, *Justice.*

Filed for record September 28th, 1839, and recorded October 5th, 1839.

JNO. RULAND, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Matthew Kerr and wife to Andrew Buchanan, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book I 2, page 570.

In witness whereof I have hereunto set my hand and official seal this 3rd day of March, A. D. 1897.

[SEAL.] M. D. LEWIS, *Recorder.*

Mr. BELL: We object to this on the ground that it is not shown that it grants any title to the property described, and, further, it is not shown it encroaches on the property in this action; and, further, on the face of the deed that land does not interfere with the ground in this action, but lies north.

The COURT: The objection is overruled.

Mr. DRABELLE: The next book is C 3, page 147, from Andrew Buchanan to George Buchanan, the same land, dated Novem-
217 ber 7th, 1842, and filed June 26th, 1843.

Mr. BELL: We make the same objection.

COURT: Same ruling.

Said deed was read and is as follows:

This indenture made this seventh day of November, one thousand eight hundred and forty-two by Andrew Buchanan and Harriet P. his wife of the first part both of Louisville, Kentucky and George Buchanan of the second part witnesseth: That the said parties of the first part in consideration of one dollar to them paid and of love and affection on the part of the said Andrew to his said brother George have bargained and sold and given and do hereby give, grant, bargain, sell and convey to the said George a certain parcel of land in the State of Missouri situate a short distance above St. Louis which the said Andrew on the 24th day of September 1839 purchased from Matthew Kerr and which said Kerr and wife conveyed to him the said Andrew by deed recorded in St. Louis county on the 28th day of September 1839, and which said parcel of land is a part

of what was formerly called Fountain farm and is bounded as follows, to wit: Beginning at a post set in the Belle Fountain road the northwest corner of the tract from which a red oak twelve inches in diameter bears south 52½ east fifty-two and one-fourth links distant thence north sixty-eight and three-fourths east twenty-six — and forty-six links (46 links) along the boundary line on the southeast of the tract heretofore conveyed to Carstens and Anglerodt to the Mississippi river the northeast corner of the tract thence meandering down said river and bounded east by it south 9½° west three chains south 8½° W. seven chains forty links to the Rocky branch so called thence up along the middle of said branch as it meanders to Habs' lower corner on said branch thence south sixty-eight and three-fourths
68¾° west along Habs' and Idlet's line ten chains and forty-
218 six links to the southwest corner of this tract in the Belle Fountain road at a point four links westward from Idlet's high gate post thence along the said road north twenty degrees ten minutes west seven chains eight and one-half links to the beginning containing seventeen acres and eight one-hundredths of an acre.

To have and to hold the same to him, the said George, and his heirs and assigns forever. And the said parties of the first part covenant that they will forever warrant and defend the title of said parcel of land to said George and his heirs and assigns against any and all claims derived by, through, or under them or either of them.

In testimony whereof the said parties have signed and sealed this deed on the day and year first written at said Louisville.

Test:

ANDREW BUCHANAN. [SEAL.]
H. P. BUCHANAN. [SEAL.]
GEO. BUCHANAN. [SEAL.]

COMMONWEALTH OF KENTUCKY, *Jefferson Circuit*, } *sct:*

November Term, 1842.

NOVEMBER 11TH, 1842.

Be it remembered that on this day Andrew Buchanan and Harriet, his wife, who are personally known to the said John I. Marshall, the sole judge of said court, to be the persons whose names are subscribed to the deed from them to George Buchanan now produced in court as having executed the same, come into open court and they severally acknowledged the same to be their act and deed for the purposes therein named; and she, the said Harriet P. Buchanan, having been first acquainted with the contents of the said deed and having had the same explained to her by the said judge, and on being examined by said judge separate and apart from her said husband, acknowledged that she executed the said deed, and then she relinquishes her dower to the lands and tenements therein mentioned voluntarily, freely, and without threats, persuasion, compulsion, or undue

influence of her said husband; whereupon it is ordered by
219 the court that a certificate of the foregoing facts is granted and direc'ed to be endorsed on said deed that the same may be recorded at St. Louis.

And the foregoing is a true copy from the record of said court.

In witness whereof I, Edmund P. Pope, clerk of said court, have hereunto set my hand and the seal of said court this 12th
[L. S.] day of November, 1842, and in the 51 years of the Commonwealth.

EDW'D P. POPE.

COMMONWEALTH OF KENTUCKY, *Jefferson Circuit Court,* } ss:

I, John I. Marshall, sole judge of the Jefferson circuit court, in the Commonwealth aforesaid, do hereby certify that Edmund P. Pope, whose attestation is above, is and was at the date aforesaid of the eleventh and twelfth days of November, 1842, the clerk of said court and keeper of its seal, and that his foregoing certificate is in due form and by the proper officer, and that full faith and credit should be given to the same; and I further certify that the foregoing deed was produced in court, and that the examination stated in said certificate was made in open court, as therein set forth.

In testimony whereof I have hereunto signed my name and affixed my seal this 15th day of November, 1842.

J. J. MARSHALL. [SEAL.]

Filed for record 14th and recorded 26th June, 1843.

HENRY P. WISE, *Recorder.*

STATE OF MISSOURI, *City of St. Louis,* } ss:

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument in writing executed by Andrew Buchanan and wife to George Buchanan, together with the acknowledgement and date of filing
220 and recording thereof, as the same remains of record in my office in Book C 3, page 147.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this 3d day of March, A. D. 1897.

M. D. LEWIS, *Recorder.*

Mr. DRABELLE: This is the will of George Buchanan, Y 6, page 233.

Mr. BELL: We object to this.

COURT: Objection overruled.

Said will was read, and is as follows:

I, George Buchanan of the city and county of St. Louis and State of Missouri, do make and publish this my last will and testament hereby revoking all others. I give bequeath and devise all my property and estate of every kind, whether real personal or mixed and wheresoever situated unto my brother Andrew Buchanan of

the city of Louisville in the State of Kentucky and Edward Barry and Doctor William M. McPheeters of the said city of St. Louis.

To have and to hold the same unto them as joint tenants and not as tenants in common, and to their executors, administrators heirs and assigns and to the survivor of them and to his executors, administrators, heirs and assigns forever. In trust however for the following uses and purposes: That said trustees shall hold, sell or otherwise dispose of the same (if they deem best) or any part thereof and invest the surplus of the proceeds not required for any of the purposes hereinafter mentioned in their discretion until my youngest child shall arrive at the age of twenty-one years. And out of the proceeds of my estate my said trustees shall provide for the education of my minor children as well as for their support and maintenance and it is my wish that they shall be well educated even if it shall require the principal of the estate to accomplish it. And I hereby appoint my trustees aforesaid
221 guardians of my minor children requesting them to call to their aid in the matter of said guardianship Miss Julia Barry who is to be liberally compensated for her services. It is my wish and I accordingly hereby direct my said trustees to remit annually as long as either of them shall live unto my sisters Ann, Betty and Mary who reside in Ireland the sum of three hundred dollars to be equally divided between them so long as they shall live and after the death of any one of them then the said sum is to be remitted to and enjoyed by the survivors or survivor of them during their or her natural life. Next it is my wish and will that said Miss Julia Barry shall be protected from want and I therefore direct my said trustees in their discretion, if at any time they shall find her in need to provide for her having due regard to her situation and the condition of my estate. If the condition of my estate will justify it. I wish my said trustees to make in their discretion advances to my children, (excepting) Mrs. Sallie McPheeters who is already married as they shall severally arrive at age or marry not to exceed, two thousand dollars each, which advance may be either in money or property. When my youngest living child, shall attain the age of twenty-one years. I will and direct that my estate shall be divided among all my children. And as I have advanced already to my daughter Sallie McPheeters the purchase-money which I paid for one-ninth of the McConnell estate which I purchased of Robert McConnell and deeded to her with her mother's portion of said estate which is over and above my advances to my other children, and as I desire to do equally for all my children, I direct and require that in the division of my said estate among my said children, my said daughter Sallie McPheeters shall receive a portion which shall be less by the said one-ninth of the said McConnell estate so purchased for and conveyed to her, than the portions of my other children, that is to say, I direct that each of my other children
222 and the heirs of any of them that may have died leaving issue shall each receive of my said estate more than my said daughter (by an amount equal to the said one-ninth of the said McConnell estate). And then it is my will that the residue of my

estate shall be equally divided among all my children and the descendants of any of them who may have died leaving issue; that is to say; the descendants of each or any of my children who may have died leaving issue, shall represent and take *per stirpes* the share that would have gone to such deceased child had he or she been alive, and in making this division regard must be had to any advances that may have been theretofore made to my said children so that they may all share equally in my estate. Moreover the share of my daughter Sally must be responsible for and make good anything I *owe* my executors may possibly have to pay on account of an obligation executed by me in the St. Louis probate court, as surety for James McPheeters to enable him to get control of his daughter's estate. As this bond was executed by me upon the request of my son-in-law Doct. McPheeters; I also request and direct that my brother James Buchanan shall not be pressed for any part of the debt due by him to me. I hereby appoint my said brother Andrew and said Edward Barry and the said Doctor William M. McPheeters executors of this my will; and I desire that they shall be required to give no security either as guardians or executors. I have unlimited confidence in them and am aware that I am imposing on them a burden which they would not accept for a stranger. I therefore enjoin it upon my heirs and devisees not to attempt in any event to subject them to loss. I also desire and will that any written statement that they may make and sign as to any fact touching my estate shall be taken as conclusive proof without requiring any further voucher therefore.

In testimony whereof I have hereto set my hand and affixed my seal this seventh day of February, A. D. eighteen hundred
223 and fifty-two.

GEO. BUCHANAN. [SEAL.]

Signed, sealed, and published as for his last will and testament by the above-named testator, with the presence of each of the undersigned, who, at his request, have hereto set our names as subscribing witnesses day and year last aforesaid.

In the date the word "twenty," also the word "January," were stricken out, and the word "February" was substituted in the place of the word January, before execution hereof.

TRUSTEN POLK.
S. GRATZ MOSES.
CHAS. H. ORR.

Codicil.

I, George Buchanan of St. Louis do hereby make this codicil to my last will which precedes it.

1st. Two of my sisters are now in Scotland and their residence may not be in Ireland and I wish that no difficulty or embarrassment may arise from the statement that they live in Ireland.

2nd. I direct that my slaves Ben and Woodson shall be free at my death; and if necessary to give them their freedom I direct that my executors shall duly emancipate them and if this cannot be done

in Missouri; I direct and desire that my executors shall send or take them at the charge of my estate to such State or sovereignty as will allow them to execute this devize of freedom to them which is made in consideration of highly meritorious and faithful service. And with these modification- I confirm and republish the foregoing as my will this seventh day of January, (1853) A. D. eighteen hundred and fifty-three.

GEO. BUCHANAN. [SEAL.]

The foregoing codicil was this day signed, sealed, and published by the before-mentioned testator, George Buchanan, with the presence of each of us, who, at his request, have hereto set our names as subscribing witnesses the day and year last aforesaid, to wit, 7th January, 1853.

224

GARNETT DUNCAN.
WM. BUCHANAN.
JAMES BUCHANAN.

STATE OF MISSOURI, }
County of St. Louis, } *ss:*

Be it remembered that on this twenty-first day of January, in the year of our Lord one thousand eight hundred and fifty-four, before me, Peter Ferguson, judge of probate of the county of St. Louis, personally appeared Trusten Polk, who, being by me duly sworn, on his oath saith: I was present and saw George Buchanan, the testator, subscribe his name to the preceeding instrument in writing, purporting to be his will, and hear- him publish and declare the same to be his last will and testament. I subscribed my name as a witness thereto, as did S. Gratz Moses and Charles H. Orr, in the presence of the testator, and at the time of so doing the said Buchanan was of sound and disposing mind, to the best of my knowledge and belief.

TRUSTEN POLK.

Sworn to and subscribed before me this 21st day of January, 1854.

PETER FERGUSON,
Judge of Probate.

And on this twenty-first day of January, in the year aforesaid, also appeared S. Gratz Moses, who, being by me duly sworn, on his oath saith: I was present and saw George Buchanan, the testator, subscribe his name to the instrument of writing purporting to be his last will and testament. I subscribed my name thereto as a witness in his presence, and heard him publish and declare the same to be his last will and testament, and at the time of so doing he, said Buchanan, was of sound and disposing mind, to the best of my knowledge and belief.

S. GRATZ MOSES.

225 Sworn to and subscribed before me this 21st day of January, 1854.

PETER FERGUSON.
Judge of Probate.

COUNTY OF ST. LOUIS, ss:

The State of Missouri to any judge, or justice of the peace, or mayor, or other chief magistrate of Louisiana, Greeting:

Know ye that, confiding in your prudence and fidelity, we have appointed you and by these presents do give unto you full power and authority to call before you, at a certain day and place by you for that purpose to be appointed, William Buchanan, James Buchanan, and Garrett Duncan, subscribing witnesses to the annexed instrument in writing purporting to be a codicil to the last will of George Buchanan, and then and there to examine them on oath or affirmation whether said George Buchanan signed the same as a codicil to his last will or whether some other person signed it by his direction, whether the said George was of sound mind, whether the said witnesses subscribed their names thereto in the presence of the testator, and reduce their attestations to writing, to be subscribed by them, and when you shall have so done you are to send the same before us, in the office of our judge of probate of our county of St. Louis, together with this writ, under your hand.

In testimony whereof we have caused the seal of our probate court for the county aforesaid to be hereto affixed.

Witness Peter Ferguson, judge of our said probate court, at office, in the county of St. Louis, in the State of Missouri, this [L. S.] twenty-first day of January, in the year of our Lord one thousand eight hundred and fifty-four.

PETER FERGUSON,
Judge of St. Louis Probate Court.

In the Probate Court of St. Louis, County of St. Louis.

THE STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

226 The depositions of William Buchanan, taken the 10th day of February, A. D. 1854, before me, Charles V. Janti, a justice of the peace in and for the parish of Orleans, city of New Orleans, duly commissioned and sworn as such, at my office, No. 80 Common street, in the city of New Orleans, in the parish of Orleans, in the State of Louisiana, in pursuance and by virtue of a commission from the court of probate for the county of St. Louis, State of Missouri, hereto annexed, dated the 21st day of January, A. D. 1854, with the will and codicil of George Buchanan, also attached hereto and which is herewith returned.

Said William Buchanan, the deponent, who is known to me and who is a resident of New Orleans, being by me first duly cautioned and solemnly sworn to depose the truth, the whole truth, and nothing

but the truth, and carefully examined, deposes and says that he has been well acquainted with George Buchanan, and that at his request deponent was present at the lodgings of said George Buchanan on the seventh day of January, 185–, when said George Buchanan signed, sealed, and published the codicil to his will which is attached to said commission and now before deponent, and that said George Buchanan signed and sealed said codicil in presence of deponant and of James Buchanan and Garrett Duncan, and that said George Buchanan then requested deponant and said James Buchanan and said Garnett Duncan to attest the same, and that deponent and James Buchanan and Garnett Duncan did then attest the same in presence of said George and also in presence of each other, and he recognizes his signature and also the signatures of the said other attesting witnesses to said attestations, and says they are all genuine; and further says that the said George Buchanan signed the said codicil with his own hand, and that said George was then of sound and disposing mind and memory and was in full possession of his faculties.

Further says not.

WM. BUCHANAN.

227 Sworn and subscribed before me this 10th day of February, 1854.

C. V. JOUTI,
Justice of the Peace for the Parish of Orleans.

Also the Depositions of James Buchanan, Taken at the Same Time and Place and under the Same Commission.

Said deponent, being of lawful age — being first duly sworn, deposes that said commission and the will and codicil by said George Buchanan are now before him, and that he has read and fully concurs in all the statement- made by William Buchanan in the foregoing depositions; that he saw said George Buchanan sign and seal codicil, and heard him publish and declare the same, with the will to which it was added, to — his last will and testament, all which was done in presence of this deponent, William Buchanan, and Garnett Duncan, and that deponant and William Buchanan and Garnett Duncan attested the said codicil at the request of said George and in the presence of said George and of each other on the seventh day of January, 1853, and that said George was then of sound and disposing mind, memory, and discretion; and further says not.

JAMES BUCHANAN.

Sworn to and subscribed before me this 10th day of February, 1854.

C. V. JOUTI,
Justice of the Peace.

Also the Depositions of Garnett Duncan, Taken at the Same Time and Place and under the Same Commission.

Said deponant, being of lawful age and duly sworn, says that George Buchanan, on the 7th of January, 1853, signed and sealed the codicil attached to said commission and published and declared the same, together with the will under which it was written, to be his last will and testament in presence of this deponent and James Buchanan and William Buchanan, all of whom attested the
228 said codicil at the request and in the presence of said George and also in the presence of each other, and that said George Buchanan, when he made, signed, and published said codicil, as aforesaid, — of sound and disposing mind and memory; that he had known said George intimately and been his counselor for about thirty years; that said George, on the day before said codicil was made, told him he wished to make a slight change in his will, and explained clearly the change he wished, with his reasons for so doing, and requested deponent to come to his lodgings, at a designated hour, on the next day, when he would have other witnesses present; that he accordingly met said George at the appointed time and spent a considerable time with him and had great deal of conversation with him, and that he is certain that said George was then in the full possession of his reason and memory and was of sound mind. Deponant wrote said codicil upon the dictation of said George and in his presence and added the scroll thereto. Said George then read it carefully and discussed it before it was executed. After said codicil was completed said George requested deponant to take and enclose it by mail to Mr. Barry, at St. Louis, to guard against any accident. Deponant complied with that request.

GARNETT DUNCAN.

Sworn to and subscribed before me this 10th day of February, 1854.

C. V. JOUTI,
Justice of the Peace for the Parish of Orleans.

THE STATE OF LOUISIANA, } ss:
Parish of Orleans, City of New Orleans, }

I, Charles V. Jouti, second justice of the peace for the parish of Orleans, duly elected, sworn, commissioned, and acting as such in and for the city of New Orleans, parish of Orleans, in the State of
229 Louisiana, do hereby certify that the foregoing depositions of William Buchanan, James Buchanan, and Garnett Duncan, citizens of New Orleans, were this day taken, sworn to, and subscribed before me, at my office, in said city, to be read in evidence *with* probate court for St. Louis county and State of Missouri in a certain matter therein depending touching the probate of a paper purporting to be the last will and testament and codicil of George Buchanan, deceased. Said depositions were taken under a commis-

sion from said court, which commission and the original paper purporting to be the will and codicil of George Buchanan are herewith returned. I further certify that said witnesses were first duly sworn before me, and that I there examined them carefully and reduced their examinations to writing, and that the same were severally signed by the several witnesses in my presence on this day.

In testimony whereof I have hereunto set my hand and seal, at New Orleans, on the tenth day of February, A. D. 1854.

C. V. JOUTI,
Justice of the Peace for the Parish of Orleans.

UNITED STATES OF AMERICA, }
State of Louisiana. }

By Paul O. Hebert, governor of the State of Louisiana.

These are to certify that C. V. Jouti, whose name is subscribed to the instrument of writing herein annexed, is and was at the time of subscribing his name to said instrument justice of the peace in and for the parish of Orleans, State aforesaid, and that his attestation to the same is made in due form of law and by the proper officer.

Given at Baton Rouge, under my hand and seal of the
[L. S.] State, the fifteenth day of February, one thousand eight hundred and fifty-four, and of the Independence of the United States the seventy-eight-.

P. O. HEBERT.

230 By the governor :
ANDREW F. CINON,
Secretary of State.

STATE OF MISSOURI, }
County of St. Louis, } ss:

Be it remembered that at the March term of the probate court for the county of St. Louis, on the sixth day of March, in the year one thousand eight hundred and fifty-four, the preceding instrument in writing, purporting to be the last will of George Buchanan and a codicil thereto, was produced in court, and on examination thereof and the testimony of Trusten Polk, S. Gratz Moses, William Buchanan, James Buchanan, and Garnett Duncan it is considered by said court that the same is duly proved to be the last will and testament of George Buchanan, deceased, and order the same to be certified and recorded.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county of Saint Louis, at office, in
[SEAL.] said county, the sixth day of March, in the year of our Lord one thousand eight hundred and fifty-four.

WILLIAM F. FERGUSON, *Clerk.*

STATE OF MISSOURI, }
County of St. Louis, } ss:

I, William F. Ferguson, clerk of the probate court of the county of St. Louis, in the State of Missouri, certify that the foregoing is a

true copy of the last will and testament of George Buchanan, deceased, and the probate thereof as the same now remains on file in office of the judge of probate of the county of St. Louis and as the same now remains of record in the office of the judge aforesaid in the record of letters and wills, Book E, page 195 and following.

[SEAL.] In testimony whereof I hereto set my hand and affix the seal of the probate court of the county of St. Louis,
231 at office, in said county, this twenty-first day of March, in the year of our Lord one thousand eight hundred and fifty-four.

WILLIAM F. FERGUSON, *Clerk.*

Filed and recorded March 29, 1854.

C. KEEMLE, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by George Buchanan, together with the probate thereof and date of filing and recording, as the same remains of record in my office in Book Y 6, page 233.

Witness my hand and official seal this third day of
[SEAL.] March, A. D. eighteen hundred and ninety-seven.

M. D. LEWIS, *Recorder.*

Mr. DRABELLE: We offer Book 189, page 212, Andrew Buchanan to George Buchanan's estate.

Said deed was read and is as follows:

To all whom it may concern:

I Andrew Buchanan of the city of Louisville in the State of Kentucky do hereby declare and make it known that I have never accepted the office of trustee or executor under the will of my brother George Buchanan late of the city of St. Louis, Missouri deceased. Nor have I ever entered upon or attempted to enter upon, assume or discharge any of the duties thereto belonging. And forasmuch as my residence in the State of Kentucky having disabled me from acting as one of the executors in said will named. The two other parties named therein conjointly with myself as executors and trustees to wit: William M. McPheeters and Edward Barry have received from the probate court of St. Louis county letters
232 testamentary with the will annexed of the estate of said George Buchanan and have acted as such executor both in respect to the real and personal estate of said George Buchanan.

Therefore in order to give to all concerned an authentic assurance of my having failed and refused to assume the said trusts or either of them. I do hereby declare that I have always hitherto renounced and do for all future time renounce the said trusts and each of them on me conferred or attempted to be conferred by the said will of George Buchanan deceased.

In witness whereof, I have hereunto set my hand and affixed my seal at the city of Louisville in the State of Kentucky this twenty-sixth day of March in the year eighteen hundred and fifty-seven.

ANDREW BUCHANAN. [SEAL.]

STATE OF KENTUCKY, }
County of Jefferson. }

Personally, on this twenty-sixth day of March, in the year eighteen hundred and fifty-seven, before me, the subscriber, clerk of the Jefferson county court for the county of Jefferson, Kentucky, which is a court of record having a seal, appeared Andrew Buchanan, who is to me personally known to be the same person who executed the foregoing instrument of writing, and acknowledged the same to be his act and deed.

In testimony whereof I have hereto set my hand and
[SEAL.] affixed the seal of said court, at office, in the city of Louisville, State of Kentucky, on the day and year above written.

CH. M. THRUSHAR, *Clk.*

Filed and recorded May 20th, 1851.

C. KUMLE, *Recorder.*

233 STATE MISSOURI, }
City of St. Louis, } *ss:*

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Andrew Buchanan to George Buchanan estate, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book 189, page 212.

In witness whereof I hereunto set my hand and official
[SEAL.] seal this 3rd day of March, A. D. 1897.

M. D. LEWIS, *Recorder.*

Mr. DRABELLE: We next offer Book 192, page 471, lease from executors George Buchanan's estate to Letzig, Schrage, and Liebke, July 24, 1857.

Mr. BELLE: Same objection.

COURT: Same ruling.

Said lease was read and is as follows:

This deed of lease made and entered into in duplicates this twenty-fourth day of July eighteen hundred and fifty-seven between Edward Barry and William M. McPheeters executors of the estate of George Buchanan deceased of the first part and Christian E. Letzig, Carl H. Schrage and Christian Liebke parties of the second part, witnesseth: That the said parties of the first part in consideration of the covenants agreements and stipulations hereinafter mentioned as well as the yearly rent of four hundred and fifty ($450) dollars — cents to be paid in equal quarterly payments to wit, the sum of one hundred and twelve $\frac{50}{100}$ dollars on the first days of

February, May, August, and November (except the last quarter in said term which is only two months the sum of $75 is to be paid on the last day of December) in each year (the first
234 payment to be made on the first day of November 1857) do by these presents lease to the said parties of the second part for the term of nine year- and five months which said term begins on the first day of August, eighteen hundred and fifty-seven the following-described lot of land to wit, all the land east of Second street and extending from Second street to the river and from Anglerodt street on the north to the southern boundary of said George Buchanan's estate including the entire landing or river front of said George Buchanan's land excepting the streets and alleys which are or may hereafter be laid out through said premises all of said land being in what is known as George Buchanan's addition to the town of Bremen in St. Louis county and State of Missouri. This lease is made however subject to a temporary lease made by said parties of the first part with William Stein for the landing or river front which lease extends to the last of December 1857. The said parties of the second part for themselves and legal representatives hereby covenant with lessees and their heirs and legal representatives to pay said rent quarterly as aforesaid and also to pay all city, county and State taxes and all other taxes and demands of every description nature or kind whatever which may from time to time be legally required or demanded of said premises whether general tax or special tax every failure first to pay the said quarterly rent or any part thereof when it is respectively made payable or second to pay the said city, county and State taxes and all other taxes and demands or any part thereof (legally required or demanded of said premises within the year the same shall become due assessed to either said lessors their heirs or representatives or to said lessees or their representatives) or third to keep and perform any of the other covenants *arguments* or stipulations herein shall make and create a forfeiture of this lease and a termination of the time for which the above premises were let and all the estate hereby shall be absolutely void if so deter-
235 mined at any day or time however after such failure by notice in writing to that effect given by said lessors their heirs or legal representatives or assigns to said lessee- or their legal representatives which said notice may — served by pasting a copy or duplicate of the same up at one of the most public places on said premises or by delivering a copy or duplicate of such notice to said lessee- or their legal representatives.

This lease of said premises or any part thereof is not to be assign- under penalty of forfeiture without the written consent of said lessor- their heirs or legal representatives or assigns at the expiration of this lease the said premises to be delivered to said lessors their heirs or legal representatives or assigns. The said lessees and all who may hold under them hereby engage to pay double rent for every day they or any one else in their name shall hold on *the* the whole or any part of said premises after the expiration of this lease or after forfeiture thereof. The said lessors are under penalty of forfeiture

bound to keep said premises free from any disorderly, bawdy or gambling establishments, dram shop-, tippling shops, beer-houses or any nuisance whatsoever and in case — any forfeiture of this lease, the said lesseers their heirs or legal representatives or assigns may forthwith take possession of said premises with all the improvements thereon and shall be entitled to the same any custom, usage or law to the contrary notwithstanding all improvements erected on said premises by said lessors or their legal representatives or by any one who may claim under them are bound for the payment of each quarterly installments of rent and for the city and county and State taxes and all other taxes and demands as aforesaid and for any arrears of rent on taxes and in case of the punctual payment of the rent and taxes as herein specified the said lessees are hereby authorized to remove all such improvements (and no other) at the
236 expiration of this lease which they or any one who may claim under them may have erected on said premises during the said term.

In testimony whereof the parties hereto hereunto set their hands and seals to duplicate leases the day and year aforesaid.

EDW'D BARRY. [SEAL.]
CARL H. SCHRAGE. [SEAL.]
W. M. McPHEETERS. [SEAL.]
CH. LIEBKE. [SEAL.]
C. E. LETZIG. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this 25th day of July, A. D. 1857, before me, the undersigned, a notary public within and for said county, came Edward Barry and William M. McPheeters and Christian E. Letzig, Carl H. Schrage, and Christian Liebke, who are personally known to me to be the same persons whose names are subscribed to the foregoing lease, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and
[SEAL.] official seal the date last above written.

DAVID S. BINGHAM,
Notary Public, St. Louis County, Missouri.

Filed and recorded July 25th, 1857.

C. KEEMLE, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by George Buchanan's executors to Christian
237 Liebke *et al.*, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book 192, page 471.

In witness whereof I have hereunto set my hand and
[SEAL.] official seal this third day of March, A. D. 1897.
M. D. LEWIS, *Recorder.*

We next offer Book 308, pages 522, 524, and 532—the Buchanan partition and plat.

Mr. BELL: Same objections.

Objection overruled.

Said partition and plat are as follows:

(Here follow maps marked pp. 237 & 238.)

239 We, the undersigned, Samuel Gatz, William G. Clarke, and Samuel C. Lawrence, commissioners appointed by virtue of a certain indenture entered into the twentieth day of January, eighteen hundred and sixty-six, by and between George Buchanan, Francis S. Buchanan, William M. McPheeters and Sallie B. McPheeters, his wife; Henry T. Crosby and Julia Crosby, his wife; Isaac W. Scott and Mary Scott, his wife, to make partition among the said parties of certain real estate described in said indenture, a copy of which is hereto annexed and made a part of this report, respectfully report that, in pursuance of the powers in us invested by the said indenture, we employed William A. Cozens, a competent surveyor, to lay off so much of said property into lots, blocks, streets, and alleys as has not heretofore been laid off, and to construct two plats of said real estate, which plats, marked A and B,— herewith filed as a part of this report. We then further proceeded to view, assess, and value the said premises and to set apart and divide the same as follows, to wit:

I. We set apart and assign to George Buchanan one lot of ground, of the value of two thousand dollars, in block numbered three on the plat of said subdivision herewith filed and marked A, on Ninth street, containing a front of eighty feet by a depth of one hundred and forty, bounded on the north by property of Mrs. Sallie B. McPheeters, on the east by Ninth street, on the south by property of Francis S. Buchanan, and on the west by alley.

II. We set apart, allot, and assign to Francis S. Buchanan one lot of ground, of the value of two thousand dollars, in block numbered three on the plat of said subdivision herewith filed and marked A, on Ninth street, containing a front of ninety feet by a depth of one hundred and forty feet, bounded on the north by property of George Buchanan, on the east by Ninth street, on the south by property of S. B. McPheeters, and on the west by alley.

240 III. We set apart, allot, and assign to Mrs. Sallie B. McPheeters one lot of ground, of the value of one thousand dollars, in block numbered three on the plat of said subdivision herewith filed and marked A, on Ninth street, containing a front of thirty-four feet by a depth of one hundred and forty feet, bounded on the north by Anglerodt street, on the east by Ninth street, on the south by property of George Buchanan, and on the west by alley.

IV. We then divided the remainder of said property into five

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portions of equal values, and numbered respectively one, two, three, four, and five, one of which was assigned by allotment to each of said parties, said allotments being drawn by us, the said commissioners, all of the said parties being present in person or by their duly authorized agents. Portion number one was drawn by Mrs. Sallie B. McPheeters, consisting of the following-described lots and parcels of land, to wit: One lot of ground in block numbered five on the plat of said subdivision herewith filed and marked A, on Broadway, containing a front of one hundred and eleven feet by a depth of one hundred and thirty-five feet, bounded on the north by property allotted to Francis S. Buchanan, on the east by alley, on the south by Buchanan street, and on the west by Broadway; one lot of ground in block numbered four on the plat of said subdivision herewith filed and marked "A," on Ninth street, containing a front of twenty-six — and five inches by a depth of one hundred and fifty feet, bounded on the north by property allotted to Julia Crosby, on the east by alley, on the south by Martin, and on the west by Ninth street; one lot of ground in block numbered three on the plat of said subdivision herewith filed and marked "A," on Ninth street, containing a front of twenty-five feet by a depth of one hundred and forty feet, bounded on the north by property allotted to
F. S. Buchanan, on the east by Ninth street, on the south by
241 property allotted to Mary B. Scott, and on the west by alley; one lot of ground in block numbered five on the plat of said subdivision herewith filed and marked "A," on Second street, containing a front of forty-five feet by a depth of one hundred and thirty-five feet, bounded on the north by Anglerodt street, on the east by Second street, on the south by property of W. C. Martin, and on the west by alley; one lot of ground in block numbered six on the plat of said subdivision herewith filed and marked A, on First street, containing a front of two hundred and ninety feet by a depth of one hundred and forty feet, bounded on the north by Angelrodt street, on the east by First street, on the south by Buchanan street, and on the west by alley; one lot of ground in block numbered fifteen on the plat of said subdivision herewith filed and marked "A," on second street, containing a front of fifty-five feet by a depth of one hundred and forty feet, bounded on the north by property allot-ed to George Buchanan, on the east by alley, on the south by Rocky Branch creek, on the west by Second street; one lot of ground in blocks numbered nine and ten on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of forty feet and running with that width to Mississippi river, bounded on the north by property allot-ed to Julia Crosby, east by Mississippi river, south by Buchanan street, and west by Blank street No. one; one lot of ground on block numbered thirteen on the plat of said subdivision herewith filed and marked "A," on Kennett street, containing a front of two hundred feet by a depth of one hundred and forty feet, bounded on the north by Buchanan street, on the east by alley, on the south by Rocky Branch creek, and on the west by Kennett street; one lot of ground in block- numbered eleven and twelve on the plat of said subdivision herewith filed and

marked "A," on Blank street No. one, containing a front of twenty feet and running with that width to the Mississippi river, bounded on the north by Buchanan street, on the east by Missis-
242 sippi river, on the south by property allot-ed to George Buchanan, and on the west by Blank street No. one; one lot of ground in block numbered thirteen on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of three hundred and nine feet by a depth of one hundred and forty feet, bounded on the north by property allot-ed to Julia Crosby, on the east by Blank street No. one, on the south by Rocky Branch creek, and on the west by alley; one lot of ground on Grand avenue on a plat of said subdivision herewith filed and marked "B," containing a front of seventy feet and six inches by a depth of three hundred and fourteen feet five and one-half inches, bounded on the north by property allot-ed to F. S. Buchanan, on the east by Grand avenue, on the south by property allot-ed to George Buchanan, and on the west by Obear avenue. Portion number two was drawn by Mrs. Julia Crosby, consisting of the following-described lots and parcels of ground, to wit: One lot of ground in block numbered five on the plat of said subdivision herewith filed and marked "A," on Broadway, containing a front of one hundred and twelve feet by a depth of one hundred and thirty-five feet, bounded on the north by Angelrodt street, on the east by alley, on the south by property allot-ed to Francis S. Buchanan, and on the west by Broadway; one lot of ground in block numbered four on the plat of said subdivision herewith filed and marked "A," on Ninth street, containing a front of twenty-six feet five inches by a depth of one hundred and fifty feet, bounded on the north by property allot-ed to F. S. Buchanan, on the east by alley, on the south by property allot-ed to S. B. McPheeters, and on the west by Ninth street; one lot of ground in block numbered five on the plat of said subdivision herewith filed and marked "A," on Second street, containing a front of eighty feet by a depth of one hundred and thirty-five feet, bounded on the north by W. C. Martin, on the east by Second street on the south by property allot-ed to F. S. Buchanan, and on the west by alley; one lot of ground in block numbered
243 eight on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of two hundred and ninety feet by a depth of one hundred and forty feet, bounded on the north by Angelrodt street, on the east by Blank street No. one, on the south by Buchanan street, and on the west by alley; one lot of ground in blocks numbered nine and ten on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of seventy feet and running with that width to the Mississippi river, bounded on the north by property allotted to F. S. Buchanan, on the east by Mississippi river, on the south by property allotted to S. B. McPheeters, and on the *south* by Blank street No. one; one lot of ground in block numbered thirteen on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of two hundred feet by a depth of one hundred and forty feet, bounded on the north

by Buchanan street, on the east by Blank street No. one, on the south by Rocky Branch creek, and on the west by alley; one lot of ground in blocks eleven and twelve on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of forty-seven feet and running with that width to the Mississippi river, bounded on the north by property allotted to F. S. Buchanan, on the east by Mississippi river, on the south by property allotted to Mary B. Scott, and on the west by Blank street No. one; one lot of ground in block numbered thirteen on the plat of said subdivision herewith filed and marked "A," on Kennett street, containing a front of one hundred and three feet by a depth of one hundred and forty feet, bounded on the north by property allot-ed to S. B. McPheeters, on the east by alley, on the south by Rocky Branch creek, and on the west by Kennett street; one lot of ground on Grand avenue as the same is laid down on the plat of said subdivision herewith filed and marked "B," containing a front of eighty-one feet by a depth of three hun-
244 dred and fourteen feet five and one-half inches, bounded on the north by Anna street, on the east by Grand avenue, on the south by property allot-ed to F. S. Buchanan, and on the west by Obear avenue. Portion number three was drawn by Francis S. Buchanan, consisting of the following-described lots and parcels of lands, to wit: One lot of ground in block numbered four on the plat of said subdivision herewith filed and marked "A," on Broadway, containing a front of fifty feet by a depth of one hundred and fifty feet, bounded on the north by property allot-ed to Mary B. Scott, on the east by Broadway, on the south by Buchanan street, and on the west by alley; one lot of ground in block numbered five on the plat of said subdivision herewith filed and marked "A," on Broadway, containing a front of sixty-seven feet by a depth of one hundred and thirty-five feet, bounded on the north by property allotted to Julia Crosby, on the east by alley, on the south by property allotted to S. B. McPheeters, and on the west by Broadway; one lot of ground in block numbered four on the plat of said subdivision herewith filed and marked "A," on Ninth street, containing twenty-six feet and five inches front by one hundred and fifty feet deep, bounded on the north by property allot-ed to Mary B. Scott, on the east by alley, on the south by property allot-ed to Julia Crosby, and on the west by Ninth street; one lot of ground in block numbered five on the plat of subdivision herewith filed and marked "A," on Second street, containing a front of sixty feet by a depth of one hundred and thirty-five feet, bounded on the north by property allot-ed to Julia Crosby, on the east by Second street, on the south by property allot-ed to George Buchanan, and on the west by alley; one lot of ground in block numbered eight on the plat of said subdivision herewith filed and marked "A," on Kennett street, containing a front of two hundred and ninety feet by a depth of one hundred and forty feet, bounded on the north by Anglerodt street, on the east by alley, on the south by Buchanan street, and on the west by Kennett street;
245 one lot of ground in block numbered fifteen on the plat of said subdivision herewith filed and marked "A," on Second street,

having a front of twenty-five feet by a depth of one hundred and forty feet, bounded on the north by Buchanan street, on the east by alley, on the south by property allot-ed to Mary B. Scott, and on the west by Second street; one lot of ground in block numbered fifteen on the plat of said subdivision herewith filed and marked A, on First street, containing a front of one hundred and ninety-one feet and five inches by a depth of one hundred and forty feet, bounded on the north by Buchanan street, on the east by First street, on the south by Rocky Branch creek; one lot of ground in block numbered ten on the plat of said subdivision herewith filed and marked "A," on Blank street number one, containing a front of seventy feet and running with that width to the Mississippi river, bounded on the north by property allot-ed to Mary B. Scott, on the east by Mississippi river, on the south by property allot-ed to Julia Crosby, on the west by Blank street No. one; one lot of ground in block numbered fifteen on the plat of said subdivision herewith filed and marked "A," on Second street, containing a front of twenty-five feet by a depth of one hundred and forty feet, bounded on the north by Buchanan street, east by alley, on the south by property allot-ed to Mary B. Scott, and on the west by Second street; one lot of ground in blocks numbered eleven and twelve on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of forty-five feet and running with that width to the Mississippi river, bounded on the north by property allot-ed to Mary B. Scott, on the east by Mississippi river, on the south by property allot-ed to Julia Crosby, and on the west by Blank street No. one; one lot of ground in block numbered fourteen on the plat of said subdivision herewith filed and marked "A," on Kennett street, containing a front of ninety feet by a depth of one hundred and forty feet, bounded on the north by property allot-ed to Mary B. Scott, on the east by Kennett street, on the south by Rocky Branch creek, on the west by alley; one lot of ground on Grand avenue as the same is laid down on the plat of said subdivision herewith filed and marked B, containing a front of seventy-three feet and six inches by a depth of three hundred and fourteen feet five and one-half inches, bounded on the north by property allot-ed to Julia Crosby, on the east by Grand avenue, on the south by property allot-ed to S. B. McPheeters, and on the west by Obear avenue. Portion number four was drawn by Mrs. Mary B. Scott, consisting of the following-described lots and parcels of lands, to wit: One lot of ground in block number four on the plat of said subdivision herewith filed and marked "A," on Broadway, containing a front of one hundred and twenty-two feet by a depth of one hundred and fifty feet, bounded on the north by property allot-ed to George Buchanan, on the east by Broadway, on the south by property allot-ed to F. S. Buchanan, and on the west by alley; one lot of ground in block numbered four on the plat of said subdivision herewith filed and marked "A," on Ninth street, containing a front of twenty-six feet and five inches by a depth of one hundred and fifty feet, bounded on the north by property allotted to George Buchanan, on the east by alley, on the south by property of F. S. Buchanan, and on the

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west by Ninth street; one lot of ground in block numbered three on the plat of said subdivision herewith filed and marked "A," on Ninth street, containing a front of thirty-one feet by a depth of one hundred and forty feet, bounded on the north by property allot-ed to S. B. McPheeters, on the east by Ninth street, on the south by Buchanan street, and on the west by alley; one lot of ground in block numbered three on
247 the plat of said subdivision herewith filed and marked "A," on Ninth street, containing a front of thirty feet by a depth of one hundred and forty feet, bounded on the north by property allot-ed to S. B. McPheeters, on the east by Ninth street, on the south by Buchanan street, and on the west by alley; one lot of ground in block number seven on the plat of said subdivision herewith filed and marked "A," on Kennett street, containing a front of two hundred and ninety feet by a depth of one hundred and forty feet, bounded on the north by Anglerodt street, on the east by Kennett street, on the south by Buchanan street, and on the west by alley; one lot of ground in block numbered fifteen in the plat of said subdivision herewith filed and marked "A," on Second street, containing a front of twenty-five feet by a depth of one hundred and forty feet, bounded on the north by property allot-ed to F. S. Buchanan, on the east by alley, on the south by property allot-ed to George Buchanan, and on the west by Second street; one lot of ground in blocks nine and ten on the plat of said subdivision now herewith filed and marked "A," on Blank street No. one, containing a front of seventy feet and running with that width to the Mississippi river, bounded on the north by property allot-ed to George Buchanan, on the east by the Mississippi river, on the south by property allot-ed to F. S. Buchanan, and on the west by Blank street No. one; one lot of ground in block numbered fourteen on the plat of said subdivision herewith filed and marked "A," on Kennett street, containing a front of two hundred feet by a depth of one hundred and forty feet, bounded on the north by Buchanan street, on the east by Kennett street, on the south by property allot-ed to F. S. Buchanan, and on the west by alley; one lot of ground in block- numbered eleven and twelve on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of forty-six feet and running with that width to the Mississippi river, bounded on the north by property allot-ed to George Buchanan, on the east by Mississippi river, on the south by property
248 allot-ed to F. S. Buchanan, and on the west by Blank street No. one; one lot of ground in block number twelve on the plat of said subdivision herewith filed and marked "A," on Blank street No. two, containing a front of one hundred and fifty-two feet by one hundred and forty feet deep, bounded on the north by property allot-ed to Julia Crosby, on the east by Blank street No. two, on the south by Mississippi river, and on the west by alley; one lot of ground on Grand avenue as the same is laid down on the plat of said subdivision herewith filed and marked "B," containing a front of fifty-eight feet by a depth of three hundred and fourteen feet five and one-half inches, bounded on the north by property allot-ed to

George Buchanan, east by Grand avenue, on the south by Guy street, and on the west by Obear avenue.

Portion number five was drawn by George Buchanan, consisting of the following-described lots and parcels of land, to wit: One lot of ground in block numbered four on the plat of said subdivision herewith filed and marked "A," on Broadway, containing a front of one hundred and eighteen feet by a depth of one hundred and fifty feet, bounded on the north by Angelrodt street, on the east by Broadway, on the south by property allot-ed to Mary B. Scott, and on the west by alley; one lot of ground in block number four on the plat of said subdivision herewith filed and marked "A," on Ninth street, containing a front of twenty-six feet and five inches by a depth of one hundred and fifty feet, bounded on the north by property of J. Roth, on the east by alley, on the south by property allot-ed to Mary B. Scott, and on the west by Ninth street; one lot of ground in block numbered five on the plat of said subdivision herewith filed and marked "A," on Second street, containing a front of sixty-five feet by a depth of one hundred and thirty-five feet, bounded on the north by property allot-ed to F. S. Buchanan, on the east by Second street, on the south by Buchanan street, and on the west by alley; one
249 lot of ground in block numbered seven on the plat of said subdivision herewith filed and marked "A," on First street, containing a front of two hundred and ninety feet by a depth of one hundred and forty feet, bounded on the north by Angelrodt street, on the east by alley, on the south by Buchanan street, and on the west by First street; one lot of ground in block numbered fifteen on the plat of said subdivision herewith filed and marked "A," on Second street, containing a front of twenty-five feet by a depth of one hundred and forty feet, bounded on the north by property allot-ed to S. B. McPheeters, on the east by alley, on the south by property allot-ed to S. B. McPheeters, and on the west by Second street; one lot of ground in block numbered ten on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of forty feet and running with that width to the Mississippi river, bounded on the north by Angelrodt street, on the east by Mississippi river, on the south by property allot-ed to Mary B. Scott, and on the west by Blank street No. one; one lot of ground in block numbered fourteen on the plat of said subdivision herewith filed and marked "A," on First street, containing a front of two hundred and ten feet and nine inches by a depth of one hundred and forty feet, bounded on the north by Buchanan street, on the east by alley, on the south by Rocky Branch creek, and on the west by First street; one lot of ground in blocks eleven and twelve on the plat of said subdivision herewith filed and marked "A," on Blank street No. one, containing a front of forty-two feet and running with that width to the Mississippi river, bounded on the north by property allot-ed to S. B. McPheeters, on the east by Mississippi river, on the south by property allot-ed to Mary B. Scott, and on the west by Blank street No. one; one lot of ground in block numbered twelve on

Blank street No. one on the plat of said subdivision herewith
250 filed and marked "A," containing a front of three hundred eighty-five feet by a depth of one hundred and forty feet, bounded on the north by property allot-ed to Julia Crosby, on the east by alley, on the south by Rock-Branch creek, and on the west by Blank street No. one; one lot of ground on Grand avenue, *as the same is laid down on the plat of* said subdivision herewith filed and marked "B," containing a front of seventy-four feet and nine inches by a depth of three hundred and fourteen feet five and one-half inches, bounded on the north by property allot-ed to S. B. McPheeters, on the east by Grand avenue, on the south by property allot-ed to Mary B. Scott, and on the west by Obear avenue; all of which is respectively submitted.

Given under our hands at the city and county of St. Louis, Missouri, this 19th day of April, A. D. 1886.

SAMUEL GATZ. [SEAL.]
S. C. LAWRENCE. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this 19th day of April, eighteen hundred and sixty-six, before me, the undersigned, a notary public within and for the county aforesaid, came Samuel Gatz and Samuel C. Lawrance, who are all personally known to me to be the same persons whose names are subscribed to the foregoing report of commissioners as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my notarial seal, at my office, in St. Louis, the day and year last above written.

WILLIAM B. SWAN,
Notary Public, St. Louis Co., Mo.

251 Filed, recorded April 19th, 1866.

JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by William M. McPheeters *et al.*, by commissioners, in partition, together with the annexed plats, with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book 308, page 524.

In witness whereof I have hereunto set my hand and
[SEAL.] official seal this 3rd day of March, A. D. 1897.

M. D. LEWIS, *Recorder.*

Mr. BELL: In order to shorten matters, we will dispense with the production, and you will note our objections to all of them.

It was hereby agreed that it was not necessary to have the books.

Mr. DRABELLE: The last deed introduced was Book 308. Book 335 is the next we offer, page 300—conveyance by George Buchanan to P. H. French.

Which was read and is as follows:

(U. S. stamp, $3.00. G. B., 16, –666.)

This deed made and entered into this sixteenth day of June A. D. eighteen hundred and sixty-six by and between George Buchanan of the city and county of St. Louis, State of Missouri, party of the first part and Parker H. French of the same city, county and
252 State party of the second part witnesseth: That the said party of the first part for and in consideration of the sum of two thousand eight hundred and eighty-seven dollars and fifty cents, to him paid by the said party of the second part the receipt of which is hereby acknowledged does by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part the following-described real estate, to wit: One lot in Blank street number one having three hundred and eighty-five (385) feet front, and one hundred and forty (140) feet in depth, and bounded on the north by property of Julius Crosby, on the east by an alley, on the south by Rocky Branch creek, and on the west by Blank street number one. To have and to hold the same together with all the right-, privileges and appurtenances to the same belonging unto the said party of the second part and to his heirs and assigns forever, the said George Buchanan hereby covenanting that his heirs executors and administrators shall and will warrant and defend the title to the premises unto the said party of the second part and to his heirs and assigns, forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

GEORGE BUCHANAN. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this sixteenth day of June, A. D. eighteen hundred and sixty-six, before me, the undersigned, a notary public, duly commissioned and qualified, within and for the county and State aforesaid, came George Buchanan, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and he
253 acknowledged the same to be his act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my notarial seal, at office, in the city of St. Louis, the day and
[SEAL.] year last above written.

E. W. TETTMANN,
Notary Public, St. Louis Co., Mo.

Filed, recorded Feb'y 20th, 1869.

JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by George Buchanan to Parker H. *French*, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book No. 335, page 300.

In witness whereof I have hereunto set my hand and [SEAL.] official seal this 3rd day of March, A. D. 1897.

M. D. LEWIS, *Recorder.*

Mr. ALLEN: Part of Buchanan's addition?

Mr. DRABELLE: Yes.

Then we offer Book 375, page 303. It is a conveyance from P. H. French to Benjamin W. Lewis, Jr.

Mr. ALLEN: What is the date of that?

A. It is dated June 13th, 1868.

Mr. BELL: Conveying the same property?

Mr. DRABELLE: Yes.

254 Which was read and is as follows:

(U. S. stamp, 50 cts. A. M., June 16, '69.)

This deed made and entered into this thirteenth day of June eighteen hundred and sixty-eight by and between, Alexander Mason, trustee of Jackson Farrar of the city and county of St. Louis and State of Missouri party of the first part and Benjamin M. Lewis, Jr., of the same place party of the second part witnesseth: Whereas, Parker H. French and Lucretia C. (his wife) of the city and county of St. Louis and State aforesaid by deed dated eight day of July eighteen hundred and sixty-seven recorded in the recorder's office of the county of St. Louis, State of Missouri, in Book 338, page 456, did convey to the said party of the first part as trustee the following-described real estate to wit: One lot in Blank street number one (1) in block twelve (12) in *which* is known as Buchanan's addition to the city of St. Louis a map of which is now on file in the recorder's office in said city having three hundred and eighty-five (385) feet front and a depth of one hundred and forty (140) feet, and bounded on the north by property of Julia Crosby on the east by the river front, on the south by Rocky branch and the river on the west by Blank street number one (1) which conveyance was in trust for the following purpose therein named to wit: Whereas the said Parker H. French has this day executed a certain promissory note for twelve hundred and forty-three dollars and thirty-five cents ($1,243.35) negotiable and payable without defalcation or discount four months after date, with interest at the rate of ten per cent. per annum to the order of Jackson Farrar and whereas it was provided in said deed that
255 if said promissory note shall be punctually paid at maturity and if the covenants aforesaid shall be well and truly kept and all amounts expended as aforesaid shall be refunded and repaid to said party of the third part or his assigns by said Parker H.

French or his legal representatives then the property hereinbefore conveyed shall be released at the cost of the said party, but if said promissory note shall be allowed to remain due and unpaid or in case payment of an amount expended as aforesaid should not be made &c., then this deed shall remain in full force and the said party hereto of the first part might proceed to sell the property hereinbefore described (being the same above mentioned) *as* any part thereof at public vendue to the highest bidder at the east door of the court-house for cash first giving five days' public notice of the time, terms and place of said sale, and of the property to be sold by advertisement in some newspaper printed in the city and county of St. Louis and upon such sale should execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof. And whereas the said Parker H. French did fail to comply with the terms of said deed in this, to wit, that said promissory note and the interest thereon was not paid at maturity. Whereupon the said party of the first part being thereto required by the party of the third party named in said deed did on the twenty-seventh day of May eighteen hundred and sixty-eight at the east front door of the court-house in the city of St. Louis proceed to sell the said property at public vendue to the highest bidder for cash first having given five days' public notice of the time, terms and place of said sale and of the property to be sold by advertisement published in the Missouri Democrat a newspaper printed in the city of St. Louis, State of Missouri,
256 a copy of which with an affidavit of Daniel M. Hauser proving its publication is hereto annexed and made part of this deed at which time and place the said party of the second part was the highest bidder for said property at the price and sum of five hundred dollars and *and* the same was struck off to him accordingly.

Now therefore in consideration of the premises and of the said sum of five hundred dollars to him paid by the said party of the second part the receipt of which is acknowledged the said party of the first part hereby grant-, sell-, and convey- to the said party of the second part all the right, title and interest, estate, claim and demands of, in and to the above-described property which was vested in him by the above-executed deed. To have and to hold the same with all the rights, immunities, privileges and appurtenances thereunto belonging unto the said party of the second part and his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year above written.

ALEX. MASON, *Trustee.* [SEAL.]

Executed in presence of—

—— ——.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this sixteenth day of June, eighteen hundred and sixty-eight, before me, the undersigned, a notary pub-

lic within and for the county and State aforesaid, came Alexander Mason, trustee, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as par*ties* thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

In testimony whereof I hereunto set my hand and
[SEAL.] affix my notarial seal, in the city of St. Louis, the
257 day and year last aforesaid.

EMIL GESSLER,
Notary Public.

Trustee's Sale.

Whereas Parker H. French and Lucretia C. French, his wife, by their certain deed of trust dated July 8th, 1867 (eight- day of July, eighteen hundred and sixty-seven), and recorded in Book 338, page 456, in the office of the recorder of deeds for St. Louis county, Missouri, did convey to the undersigned, as trustee, all their right, title, and interest in and to the following-described property, lying and situate in the county of St. Louis, State of Missouri, to wit: one lot in Blank street No. 1 (1), block twelve (12), in what is known as Buchanan's addition to the city of St. Louis, a map of which is now on file in the recorder's office in said city, having three hundred and eighty-five (385) feet front and a depth — one hundred and forty (140) feet certain, and as much more beyond that depth as there may be, to the new city water line, and bounded on the north by property of Julia Crosby, on the east by the river front, on the south by Rocky branch and the river, on the west by Blank street No. one (1), which said conveyance was made in trust to secure the payment of a certain promissory note therein described; and whereas said note has become due and is unpaid: Now, therefore, in pursuance of the terms of said deed of trust, at the request of the legal holders, I will on Wednesday, the 27th day of May, 1868, between the hours of ten o'clock a. m. and four o'clock p. m. of that day, at the east front door of the court-house, in the city of St. Louis, Missouri, proceed to sell at public vendue, for cash, to the highest bidder, the above-described property, to satisfy said note and the interest accrued, together with the costs and expenses of executing this trust.

ALEX. MASON, *Trustee.*

STATE OF MISSOURI, }
County of St. Louis, } *ss:*

258 Personally appeared before me, the undersigned (a notary public within and for the county of St. Louis), Daniel M. Houser, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "Missouri Democrat" (printed within the said county and State, the newspaper of which he is one of the publishers), for six times, the first insertion being on the twenty-first day of May and the last insertion on the twenty-seventh day of May, 1868, as follows:

1st time, May 21, 1868.
2nd time, " 22, 1868.
3rd time, " 23, 1868.
4th time, " 25, 1868.
5th time, " 26, 1868.
6th time, " 27, 1868.
[SEAL.] D. M. HOUSER.

Printer's fee..... 9.25
Affidavit..... .50

$9.75

Sworn to and subscribed before me this sixth day of June, 1868.
WM. CROUCH,
Notary Public, St. Louis Co.

Filed and recorded February 5th, 1869.
JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Parker H. French and wife *by to to* Benjamin W. Lewis, Jr., together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book 375, page 303.

259 [SEAL.] In witness whereof I have hereunto set my hand and official seal this 3rd day of March, A. D. 1897.
M. D. LEWIS, *Recorder.*

We offer next Book 313, page 542—George Buchanan and all other heirs; partition deed to Julia Crosby, wife of Henry T. Crosby, a conveyance of all lots, marked # 2.

Mr. BELL: We object to that.

Objection overruled.

Said deed was read and is as follows:

(Not subject to stamp duty. W. Taussig.)

This deed made and entered into this tenth day of March, eighteen hundred and sixty-six by and between, George Buchanan, Francis S. Buchanan, William M. McPheeters and Sallie B. McPheeters, his wife and William M. McPheeters, trustee for Mary B. Scott acting under her written direction as witnesseth by her signature hereto and Isaac W. Scott and Mary B. Scott his wife parties of the first part and Julia Crosby wife of Henry T. Crosby and daughter of the late George Buchanan deceased, party of the second part, witnesseth: That whereas the parties have heretofore entered in an agreement bearing date the twentieth day of January, 1866, and recorded in the recorder's office for St. Louis county for the purpose of making partition among themselves as heirs of George Buchanan deceased of certain real estate therein described and belonging to the estate of the said George Buch-

anan, and whereas the commissioners named in said agreement acting in accordance with the terms thereof have
260 allot-ed to Mrs. Julia Crosby party of the second part as her portion of said real estate in the lots and parcels of land hereinafter described as will appear by reference to the report of said commissioners on file in the recorder's office for St. Louis county. Now therefore in pursuance of said agreement said parties of the first part for the purpose of making such partition of said real estate and in consideration of the premises and the sum of one dollar to *there* in hand paid by said party of the second part, the receipt of which is hereby acknowledged do by these presents, grant, bargain and sell, convey and confirm, unto the said party of the second part the following-described lots and parcels of land situated in the city and county of St. Louis and State of Missouri, as laid down and numbered on the plats accompanying the report of the commissioners for the partition of the estate of the late George Buchanan recorded in the recorder's office for the county of St. Louis, to wit: First. A lot of ground in block numbered five (5) as laid down on said plats having a front on Broadway of one hundred and twelve feet by a depth of one hundred and thirty-five feet to an alley. Bounded north by Anglerodt street, east by an alley, south by property allot-ed to Francis S. Buchanan and west by Broadway. Second. A lot of ground in block No. four (4) as laid down on said plats having a front of twenty-six feet and five inches on Ninth street by a depth of one hundred and fifty feet to an alley. Bounded north by property allot-ed to Francis S. Buchanan, east by an alley, south by property allot-ed to Mrs. Sallie B. McPheeters and west by Ninth street. Third. A lot of ground in block No. five (5) as laid down on said plats having a front of eighty feet on Second street by a depth of one hundred and thirty-five feet to an alley. Bounded on the north by Wm. C. Martin, east by Second street, south by property allot-ed to Francis S. Buchanan and west by an alley. Fourth. A lot of ground in block No. eight (8) as laid
261 down on said plats having a front of two hundred and ninety feet on Blank street No. one as designated on said plats by a depth of one hundred and forty feet to an alley. Bounded on the north by Anglerodt street, east by said Blank street No. one, south by Buchanan street and west by an alley. Fifth. A lot of ground in blocks Nos. nine and ten (9 & 10) as laid down on said plats fronting seventy feet on Blank street No. one by a depth of that width to the Mississippi river. Bounded on the north by property allot-ed to Francis S. Buchanan, east by the Mississippi river, south by property allot-ed to Mrs. Sallie B. McPheeters, and west by Blank street No. one. Sixth. A lot of ground in block No. thirteen (13) as laid down on said plat having a front of two hundred feet on Blank street No. one by a depth of one hundred and forty feet to an alley. Bounded north by Buchanan street, east by Blank street No. one, south by Rocky Branch creek on west by an alley. Seventh, a lot of ground in blocks Nos. eleven and twelve (11 & 12) as laid down on said plats having a front on Blank street No. one of fifty feet running back of that width to the Mississippi river, bounded on the north

by property allot-ed to Francis S. Buchanan, east by the Mississippi river, south by property allot-ed to Mary B. Scott and west by Blank street No. one. Eighth. A lot of ground in block No. thirteen (13) as laid down on said plats having a front on Kennett street of one hundred and three feet by a depth of one hundred and forty feet to an alley. Bounded north by property allot-ed to Mrs. Sallie B. McPheeters, east by an alley, south by Rocky Branch creek, and west by Kennett street. Ninth. A lot of ground having a front on Grand avenue of eighty-one feet by a depth of three hundred and fourteen feet and five and a half inches. Bounded on the north by Anna street, east by Grand avenue, south by property allot-ed to Francis S. Buchanan and west by Obear avenue. To have and to hold the same
262 with all the rights, immunities, privileges and appurtenances thereunto belonging unto the said party of the second part and her heirs and assigns forever, the said parties of the first part hereby covenanting, that they their heirs, executors and administrators, shall and will warrant and defend the title to the said premises unto the said party of the second part, her heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

W. M. McPHEETERS. [SEAL.]
GEORGE BUCHANAN. [SEAL.]
FRANCIS S. BUCHANAN. [SEAL.]
W. M. McPHEETERS. [SEAL.]
Trustee of Mary B. Scott.
SALLIE B. McPHEETERS. [SEAL.]
J. W. SCOTT. [SEAL.]
MARY B. SCOTT. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this 7th day of May, eighteen hundred and sixty-six, before me, the undersigned, notary public within and for the county aforesaid, came George Buchanan, Francis S. Buchannan, William M. McPheeters, and Sallie B. McPheeters, his wife, and William M. McPheeters, acting as trustee for Mrs. Mary B. Scott, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Sallie B. McPheeters, having been by me first made acquainted with the contents of the foregoing deed, acknowledged, on an examination apart from her husband, that she executed the same and relinquished her right in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

263 [SEAL.] In testimony whereof I have hereunto set my hand and seal the day and year last above written.

SAMUEL C. LAWRENCE,
Notary Public, St. Louis Co., Mo.

STATE OF KENTUCKY, } ss:
Jefferson County, }

Be it remembered that on this 3rd day of May, 1866, before me, the undersigned clerk of the county court of the county and State aforesaid, which court is a court of record, came J. W. Scott and Mary B. Scott, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Mary B. Scott, having been by me first made acquainted with the contents of the foregoing deed, acknowledged on an examination apart from her husband that she executed the same and relinquished her right in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

[SEAL.] In testimony whereof I hereunto set my hand and official seal the day and date above written.

T. JACK,
Coun. Cl'k, Jeff. Co., St. Ky.

Filed and recorded May 9th, 1866.

JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by George Buchanan *et al.* to Julia Crosby, together with the acknowledgements and date of filing and recording thereof, as the same remains of record in my office, in Book 313, 542.

264 [SEAL.] In witness whereof I hereunto set my hand and official seal this 3rd day of March, A. D. 1897.

M. D. LEWIS, *Recorder.*

We offer Book 316, page 316, George Buchanan and all other heirs to Sallie B. McPheeters, wife of William M. McPheeters, of all lots marked # 1 on the plat of the subdivision.

Same objection. Overruled.

Said deed was read and is as follows:

(Not subject to stamp duty. W. Taussig, collector internal revenue.)

This deed made and entered into this tenth day of March, eighteen hundred and sixty-six by and between Henry T. Crosby and Julia Crosby his wife and William M. McPheeters trustee for Mary B. Scott acting under her written direction as witnessed by her signature hereto and Isaac W. Scott and Mary B. Scott his wife and George Buckhanan and Francis S. Buckhanan parties of the first

part and John Wickham party of the second part and Mrs. Sallie B. McPheeters party of the third part witnesseth; that whereas the parties hereto of the first and third part- have heretofore entered into an agreement bearing date the twentieth day of January 1866 and recorded in the recorder's office for St. Louis county for the purpose of making partition amongst themselves as heirs of George Buchanan deceased of certain real estate therein described and belonging to the estate of the said George Buchanan and whereas the commissioners named in said agreement acting in accordance with the terms thereof have allotted to Mrs. Sallie B. McPheeters party of the third part
265 as her portion of said real estate the lots and parcels of land hereinafter described as will appear by reference to the report of said commissioners on file in the recorder's office for St. Louis county. Now therefore in pursuance of said agreement said parties of the first part for the purpose of making such partition of said real estate and in consideration of the premises and the sum of one dollar to them in hand paid by said party of the third part the receipt of which is hereby acknowledged do by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part, the following-described lots and parcels of land situated in the city and county of St. Louis, State of Missouri, as laid down and numbered on the plats of the estate of the late George Buchanan recorded in the recorder's office for the county of St. Louis by the commissioners for the partition of said estate, to wit: First a lot of ground in block No. five (5) as laid down on said plats having a front on Broadway of one hundred and eleven feet running back 135 feet to an alley. Bounded north by property allot-ed to F. S. Buchanan, east by an alley, south by Buchanan street, and west by Broadway. Second a lot of ground in block No. four (4) as laid down on said plats having a front on Ninth street of twenty-six feet and four inches by a depth of one hundred and fifty feet to an alley. Bounded north by property allot-ed to Julia Crosby, east by an alley, south by Martin and west by Ninth street. Third a lot of ground in block No. three (3) as laid down on said plats having a front on Ninth street of twenty-five feet by a depth of one hundred and forty feet to an alley. Bounded north by property allot-ed to F. S. Buchanan, east by Ninth street, south by property allot-ed to Mrs. Mary B. Scott and west by an alley. Fourth, a lot of ground in block No. (5) five as laid down on said plats having a front on Second street of forty-five feet by a depth of one hundred and thirty-five feet to an alley. Bounded north by Anglerodt street, east by Second street, south by Wm. C. Martin and west by an alley.
266 Fifth. A lot of ground in block No. 6 sixth as laid down on said plats having a front on First street of two hundred and ninety feet by a depth of one hundred and forty feet to an alley. Bounded north by Anglerodt street, east by First street, south by Buchanan street and west by an alley. Sixth. A lot of ground in block fifteen (15) as laid down on said plats having a front of fifty-five feet on Second street by a depth of one hundred and forty feet

to an alley. Bounded on the north by property allot-ed to George Buchanan, east by an alley, south by Rocky Branch creek and west by Second street. Seventh. A lot of ground in block No. (9–10) nine and ten as laid down on said plats having a front on Blank street No. one of forty feet by a *a* depth of that width running back to the Mississippi river, bounded north by property allot-ed to Julia Crosby, east by the Mississippi river, south by Buchanan street, and west by Blank street No. one. Eighth. A lot of ground in block No. (13) thirteen as laid down on said plats having a front of two hundred feet on Kennett street by a depth of one hundred and forty feet to an alley. Bounded north by Buchanan street, east by an alley, south by Rocky Branch creek, west by Kennett street. Ninth. A lot of ground in block Nos. (11–12) eleven and twelve fronting twenty feet on Blank street No. one as laid down on said plats and running back of that width to the Mississippi river, bounded north by Buchanan street, east by the Mississippi river, south by property allotted to George Buchanan and west by Blank street No. one. Tenth. A lot of ground in block No. thirteen (13) as laid down on said plats having a front of three hundred and nine feet on Blank street No. one by a depth of one hundred and forty feet to an alley, bounded north by property allot-ed to Julia Crosby east by Blank street No. one, south by Rocky Branch creek, and west by an alley. Eleventh. A lot of ground in block No. (3) three as laid down on said plats having a front of thirty-four feet on
267 Ninth street by a depth of one hundred and forty feet to an alley, bounded north by Anglerodt street, east by Ninth street, south by property allotted to George Buchanan, and west by an alley. Twelfth. A lot of ground fronting seventy feet six inches on Grand avenue by a depth of three hundred and fourteen 5 1/2/12 feet bounded north by property allot-ed to F. S. Buchanan, east by Grand avenue, south by property allot-ed to George Buchanan and west by Obear avenue. To have and to hold the same with all rights, immunities, privileges and appurtenances thereto belonging unto the said party of the second part his heirs and assigns forever. In trust nevertheless for the sole separate use, of the said Sallie B. McPheeters party of the third part, her heirs and assigns in fee-simple power, with full power in said trustee to convey in fee-simple, mortgage, lease or otherwise dispose of the whole or any part of said property to such person or persons and for such price or sums of money as she the said Sallie may at any time in writing signed and acknowledged or executed in presence of an attesting witness direct and appoint and in default of any such disposition or conveyance in fee during her life of the whole or any part of said premises then to convey the same or so much thereof as remains undisposed of to such person or persons and in such manner as she the said Sallie shall by any writing in the nature of a last will or testament direct and appoint, and in default of an- such disposition or appointment then to the heirs of the said Sallie B. McPheeters in fee-simple, and the said John Wickham party of the second part covenants faithfully to perform and fulfill the trust herein created.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

GEORGE BUCHANAN. [SEAL.]
FRANCES S. BUCHANAN. [SEAL.]
268 HENRY T. CR*SO*BY. [SEAL.]
JULIA CROSBY. [SEAL.]
I. W. SCOTT. [SEAL.]
MARY B. SCOTT. [SEAL.]
W. M. McPHEETERS, [SEAL.]
Trustee of Mary B. Scott.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this 7th day of May, eighteen hundred and sixty-six, before me, the undersigned notary public within and for the county aforesaid, came George Buchanan and Frances S. Buchanan and William M. McPheeters, trustee of Mary B. Scott, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed my notarial seal, at office, the day and year last above written.

SAMUEL C. LAWRANCE,
Notary Public, St. Louis Co., Mo.

STATE OF TENNESSEE, } ss:
County of Hamilton, }

Personally appeared before me Henry T. Crosby, of Chattanooga, Tennessee, who acknowledged the foregoing to be his own, free, binding act and deed, and that his signature thereto is genuine.

In testimony whereof I have hereto set my hand and [SEAL.] affixed my notarial seal this 30th day of March, 1866.

S. N. CLIVINGER,
Notary Public.

269 STATE OF KENTUCKY, } ss:
Jefferson County, }

Be it remembered that on this 3rd day of May, 1866, before me, the undersigned, clerk of the county court and county and State aforesaid (which court is a court of record), came J. W. Scott and Mary B., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Mary B. Scott, having been by me first made acquainted with the contents of the foregoing deed, acknowledged on an examination apart from her husband that she executed the same and relinquished her right in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and
[SEAL.] official seal the *date* and date above written.

T. JACK,
Coun. Ct'k, Jeff. Co. Ct., Ky.

STATE OF MISSOURI, }
County of St. Louis, } ss:

Be it remembered that on this seventh day of May, eighteen hundred and sixty-six, before me, the undersigned, a notary public within and for said county, came Henry T. Crosby, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my notarial seal, at office, in the city of St. Louis, State aforesaid,
270 the day and year last above written.

[SEAL.] W. HERKEURATH,
Notary Public for St. Louis County, Mo.

UNITED STATES OF AMERICA, }
State of New York, } ss:

Be it remembered that on the twelfth day of April, in the year one thousand eight hundred and sixty-six, before me, Gordon L. Ford, a commissioner appointed within and for the State of New York aforesaid by the governor of the State of Missouri to take the acknowledgement of deeds and other writings and administer oaths and affirmations to be used and recorded in said State of Missouri, appeared Julia Crosby, who is personally known to me to be the individual described in and who executed the annexed instrument of writing, and acknowledged the same to be her act and deed for the purposes therein mentioned; and the said Julia Crosby, being by me first made acquainted with the contents of said deed, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquished her right in the real estate therein described freely and without compulsion or undue influence of her said husband.

[SEAL.] In testimony whereof I have hereunto subscribed my name and affixed my seal of office.

GORDON S. FORD,
Commissioner, &c., for Missouri.

Filed and recorded May 9th, 1866.

JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI, }
City of St. Louis, } ss:

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of

writing executed by George Buckhanan and wife *et al.* to
271 Sallie B. McPheeter's trustee, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office, in Book 316, page 316.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this 3rd day of March, A. D. 1897.

M. D. LEWIS, *Recorder.*

This is all except Plat Book No. 3, page 39. I want to introduce Plat Book 3, page 39, of the recorder's office, St. Louis.

Objection as before. Overruled.

Said plat was exhibited and is as follows:

(Here follows map marked p. 272.)

273 C. F. LIEBKE, being duly sworn on behalf of defendants, testified as follows:

Direct examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. Please state your full name.

A. Christian F. Liebke.

Q. What is your business?

A. Mill and lumber business—saw-mill.

Q. Where are you in business?

A. In St. Louis. The office is on 2nd and Buchanan and the mill 2nd and Buchanan.

Q. How long have you been there?

A. Since 1857.

Mr. DRABELLE: Which side of Buchanan?

A. The office is on the northeast corner.

Q. Where is the mill?

A. That is to the north of Buchanan, between Buchanan and Angelrodt.

Q. Anglerodt, north of Buchanan?

A. Yes, sir.

Q. The saw-mill is on the north side?

A. Yes, sir.

COURT: The north side of Buchanan?

A. Yes, sir, and east of 2nd street.

Q. Now, I direct your attention to a lease which was recorded, and a copy of which was offered in evidence?

A. Yes, sir; I have a copy in my pocket.

Mr. ALLEN: Let me see it, please.

Mr. ALLEN: Book 192, page 471, which was introduced in evidence as being a lease from George Buchanan.

Q. Are you the same Christian Liebke mentioned?

A. Yes, sir.

COURT: From George Buchanan's estate.

Mr. ALLEN: Yes, sir; July 4th, 1857, is the date.

Q. That lease shows to be for nine years and five months?

A. That is right.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Q. State what you did under that lease.

A. I occupied the ground along that Buchanan estate.

Mr. JOHNSON: We object. I wish to call your honor's at-
274 tention, you will recollect that the plat of yesterday that we were looking at, to which this lease refers, leaves the river bank precisely where it was, exactly as the plat we read in evidence.

COURT: What is the purpose of this?

Mr. ALLEN: We expect to show by this witness he was in possession clear across this strips. We will show this property Mr. Liebke occupied was included between those two lines.

COURT: You are offering this lease for the purpose of showing he was in possession of this property?

Mr. DRABELLE: Yes.

COURT: Objection overruled.

Q. State what you did with reference to the ground beginning in 1857, and how long you continued to use it, and what use you made of it, and how far south you used it.

A. I used it for a log yard and lumber yard, and from Anglerodt to the southern line of Buchanan's estate.

Q. Where was that?

A. According to the plats we have got, that runs along with the meanderings of the Rocky branch.

Q. How long did that continue?

COURT: What was the northern boundary of this property where you used it for a log yard?

A. Anglerodt street.

Q. Where is Anglerodt street?

A. The street north of Buchanan.

Q. How long did you continue to use it? When you say log yard and lumber yard, what do you mean by that?

COURT: Down to Rocky branch?

A. Yes, sir; that lease was for nine years and five months; that took us some time to 1866.

Q. What did you do after that with reference to that ground?

A. We are still continuing to us*ing* the ground and paid rent for it.

Q. How long did that continue?

275 A. That continued up to the time there was a division of the property between the five different heirs.

Q. How is that?

A. That continued until the division of the Buchanan property among the five heirs.

Q. Can you name the heirs?

A. Yes, sir.

Q. Who were they?

A. Mrs. McPheeters——

Q. Do you remember her first name?

A. Sallie B. McPheeters; Mary B. Scott, Julia Crosby, and Frank and George Buchanan.

Q. Do you remember the fact of their making a partition and dividing the property?

A. I know they did.

Q. That was in what year? Can you tell with reference to the termination of the lease?

A. Two or three years; may be the next year following that.

Q. That is the year following the termination of your lease?

A. I think so.

Q. After that how did you hold the property, if at all?

A. Then I got it from the individual owners. I bought an undivided half of George Buchanan, and also bought for Mrs. McPheeters and Mrs. Crosby.

Q. You bought the interest of both of them?

A. Yes, sir.

Q. With reference to that which you did not buy, what did you do?

A. We used it.

Q. In what way?

A. The same way.

Q. You mean as tenant?

Mr. ALLEN: Yes.

WITNESS: Yes; I have made no changes. I have continued the same, only I paid to individuals.

Q. You say you used that continually; how far south?

A. The line of Buchanan's estate, as shown and as I understood it all the time, according to the plat.

Q. That extended how far south?

A. To Rocky branch.

Q. Rocky branch is the southern limit?

A. Yes, sir; after the division Frank and George Buchanan
276 had one large piece that run away down to Rocky branch, what is called Blank street, I presume, 110 feet west of the present right of way of the C., B. & Q. road. After the division of the property it was sold, I think, under a deed of trust.

Q. Can you indicate on that plat (showing witness plat of Buchanan subdivision) where that piece of property was?

—. This piece share #1.

Q. Who is #1?

A. That is McPheeters.

Q. The green is Geo. Buchanan's share #5?

A. Yes; that is right.

COURT: You had possession of share #5 up to the partition?

A. I will not be positive about that.

Q. With reference to share #1, I will ask you whether you continued to occupy Mrs. McPheeters' right of way and the rest of the property east of 2nd street and south of Anglerodt to the southern boundary. Mrs. McPheeters' extends to the north line of Dock street, originally to Buchanan?

A. I do not know anything about that line.

Q. As far as Mrs. McPheeters' share went you occupied?

A. Yes, sir.

Q. Did you pay rent to Mrs. McPheeters?
A. Yes, sir.
Q. How about Mrs. Crosby?
A. Same thing.
Q. That is share # 2?
A. Yes, sir; she had some more ground there. It took all in. The leases were all alike.
Q. And that was the case at the time of their amicable partition. When was that, about the termination of the lease?
A. After that. I will not be positive about # 5, whether we continued after or not.
Q. About share # 1?
A. That was continued after the partition. The partition did not give her that much. We continued keeping it after the par-
277 tition. She did not claim down here as far as she did then, so we would not occupy it all.
Q. Who did you get those leases from? I am talking in reference to your occupancy. Who were the leases from # 4? Mrs. Scott—did you have that under lease?
A. Yes, sir.
Q. # 5, George Buchanan's?
A. I had that up to the end of the lease. I will not say anything about that afterwards.
Q. Then Mrs. McPheeters, you had possession of that from 1857 up to 1866?
A. Yes, sir; I had it all the time. I have it now as far as it goes, as far as she has it.
Q. Up to the expiration of the lease now, what time have you been occupying it since, what time since 1866?
A. Now.
Q. Which have you got now?
A. Mrs. McPheeters now claims, I think, forty feet there south of this line, and afterwards, I think, we found only nineteen or twenty feet. That agreement, I believe, Mr. McPheeters made with Mr. Bent showed that.
Q. You are referring to the agreement of 1873?
A. Yes, sir; whatever she had up to 1873, as far as it goes.
Q. You mean lots 1, 5, 4, and 2?
A. I will not say about # 5; I think it was sold at the end of the lease. The others I had right along, right up to the partition.
COURT: When was the partition?
A. In 1876. Then we had gone up to the agreement instituted between McPheeters and Bent.
COURT: Do you know when that was?
A. I never knew anything about it, because I was only told about it.
COURT: Do you means lots 1 and 4?
A. I mean lots 1 and 4. I continued the lease with her for everything she had east of 2nd street. No boundaries were fixed and the same was with the Scott affair.
Q. You never fixed any boundaries on the south of that?

A. The lease is all that I know east of 2nd and south of Anglerodt.

278 Mr. ALLEN: I understand you to say you had possession of the Crosby share also after the partition?

A. Yes, sir.

Q. In what way, as lessor, owner, or what?

A. As I said before, I continued paying rent after the expiration of the lease for a certain length of time. I have forgotten the agent—Judson or Judlin. I remember I was to pay rent to them for Mrs. Crosby, and he afterwards sold part of that property to Duross and Olcott. I continued in possession of that ground and kept using it. They never ordered me off it. They never ordered any termination of any lease, and I think for some years I did not pay any rent.

Mr. ALLEN: Why?

A. Did not call for it. They did not call for any rent.

Q. And you subsequently bought the Crosby tract over to Rocky branch?

A. I bought it as far as the title went.

Q. Mr. Liebke, you say you went there in 1857?

A. Yes, sir.

Q. What business were you in before you went there?

A. I was in business down on 2nd and between Pine and Olive—the furniture business.

Q. Were you ever in the rafting business?

A. That is in the saw-mill business; if you go in the saw-mill business you go in the rafting business.

Q. In such business, did you have occasion to know the condition of the river bank from 1857 on?

A. I know I used to land rafts right here.

Q. Right where; where did you land rafts?

A. As far as the river front went. We had a right to land. That was called a regular place—that was an eddy.

Q. Where did you commence and where did you go in?

A. We commenced at Bissell's point and ran down somewhere down about Mound street, I should judge, because mills were scattered all along there. I believe the last mill about that time, I think it was about Brooklyn.

279 Q. Brooklyn street is some distance south, is it not?

A. Yes, sir.

Q. Dock street was situated how with reference to the bend?

A. I think it was the middle of the bend.

Q. About the centre of the bend?

A. Yes, sir.

Q. The bend extended from Bissell's point to somewhere along — street?

A. Yes, sir.

Q. Was it a deep bend or a shallow bend?

A. I do not think it was very deep.

Q. I do not mean deep water.

A. I understand. I do not think that was a deep bend.

Q. Where was the old shoe?

A. My recollection is when I first came there it was about, I think, east of Hall street. My recollection is we used to land some rafts tied to a post at the foot of Destrehan Street dock.

Q. Hall street was once known as Kennett street?

A. Yes, sir; I know logs were piled in there.

Q. Logs were piled in all over that territory?

A. Yes, sir.

Q. And lay there until you wanted them?

A. Yes, sir; we would bring down large rafts, and the ground was covered with rafts from Bisselle point down. I think there were thirteen or fourteen saw-mills there. Everybody was getting in a great many logs at certains seasons.

Q. Anybody could land there?

A. Yes, sir.

Q. Sometimes they would land rafts there without having sold them before night?

A. Yes, sir.

Mr. JOHNSON: No man had a right to land there.

We object.

COURT: Objection overruled.

—. Captain Liebke, as a matter of fact, in rafting with steamboats—by the way, you did rafting mostly with steamboats?

A. Yes; entirely.

280 Q. Later with towboats?

A. Yes, sir.

Q. In these days, rafting without steamboats, it is a very desirable thing to get in an eddy?

A. Yes, sir.

Q. On that account this eddy you speak of was in demand and in use for rafting?

A. Yes, sir.

Q. Between 1853 and the present time have you rented any steamboats? 1857, I mean, and the present time.

—. Why, yes.

Q. What has been the practice in that regard—did the steamboats and barges land there, from that time to now, along that shore in front of this property?

A. Yes, sir.

Q. And has been continuous since?

A. Yes, sir.

COURT: They have been landing there for how long?

A. Since 1857.

Q. Captain Liebke, do you know of a spur dyke up about Destrahan street?

A. Yes, sir.

Q. Explain what that is, who put it there, and tell what it is.

A. That dyke was built out in the river.

Q. By whom?

A. I presume by the city. I remember we got permission from

the city to put check-posts on the end of the dike when they went through?

Q. What do you mean by check-posts?

A. They are put in the ground to hold rafts and steamboats.

Q. What is a dike of that kind, such as is there, made of?

A. It is made of rock; made to run out in the river to fill up.

Q. What is the use or purpose of the dike?

A. I presume the purpose was to establish a share for the wharf and to cause slack-water and fill the ground underneath.

Q. That is the fact, is it not?

A. I suppose that is the purpose.

Q. Do you know anything about a longitudinal dike?

A. I do not know just when any longitudinal dike was put in. It seems it was put in——

281 Q. Would you say as early as 1868 or 1870?

A. I think it was. I had an idea even before that.

Q. Not later than that?

A. No.

Q. Where is the longitudinal dike—how does it run?

A. I think it commences at Bissell's point and runs—that runs—I know it runs down to North Market street.

Q. Past this point here in controversy?

A. Yes, sir.

Mr. DRABELLE: Get him to explain.

Mr. ALLEN: You mean a longitudinal dike, and particularly this longitudinal dike, runs in the direction of the river and not far from the shore. Is that it? It runs outside of the spur dike you speak of. The spur dike runs from the bank to the river, and the longitudinal dyke runs with the general current or trend of the river?

A. Yes, sir.

Q. What is the object of a longitudinal dike?

A. I presume it is done to establish certain land—to establish a wharf and fill it up behind.

Mr. BELL: I object. Object of a longitudinal dyke—I do not know what the object could have to do with it. Was that the fact? Did it make ground in front—did it make ground in front of the old shore?

COURT: The proper question: What was the effect of that?

A. I explained by having that dyke built higher than the general back of it, and, of course, it was done for the purpose of filling up that with ground.

COURT: Is that always the purpose of those dykes?

A. No; I do — know that it is. I think the purpose is to establish a wharf line more than anything else, to strengthen the land. I know it was surveyed, and the land built according to that.

Q. Where was the wharf surveyed?

A. I do not know.

282 Q. Can you state generally?

A. Within ten years. It was surveyed before the dyke was built.

Q. Do you know of it having been surveyed since that time with reference to the corner of the streets?

A. There is a corner stone for the west side of the wharf.

Q. Do you know when they were put in?

A. I do not remember. It has been there a long time.

Q. Where was the longitudinal dyke built?

A. I said I did not remember, but it was a long time ago.

COURT: How many were there?

A. The one at Destrahan street.

Q. How far did that extend north and south?

A. It commenced at Bissells point and run as far as North Market street. It might have gone further.

Q. Captain Liebke, about these corner stones, you remember they have been there a long time?

A. Yes, sir.

Q. Can you say whether they have been there ten years or more?

A. I think more than that.

Mr. BELL: What corner stones?

Mr. ALLEN: At the wharf and Dock and wharf and Buchanan, one at each corner.

WITNESS: I will not testify about Dock street. I do not remember saying that.

Q. You know of one at Buchanan?

A. Yes, sir.

Q. How far is that, about, west of the railroad tracks now?

A. 11 feet; I believe that is the ordinance, to keep within 11 feet of the west line of the wharf.

COURT: You say the stones are there?

A. Yes.

Q. Located at Buchanan street?

A. Yes, sir.

COURT: Then there is one *th*at Dock street, is there?

A. I will not state that because I never saw it.

COURT: Do you know of any other stones besides the one
283 at Buchanan street?

A. No.

Q. You do not know the exact time when it was put there?

A. I am sure it is there more than ten years. I know that is the case.

Q. Do you know for what purpose it is meant?

Mr. BELL: We object to the question.

Q. What kind of an object is it—a loose stone or whether the stone is marked?

A. I think the stone is marked City on the corner above the ground. It is a square stone, eighteen inches square, and put there by the city, establishing the west corner of the wharf and Buchanan street.

Cross-examination by LEVERETT BELL, Esq.:

Q. As I understand, the city build the spur dike from the foot of Destrahan. It projected east in the Mississippi river?

A. Yes.

Q. That is built all of stone?

A. Not stone all through that.

Q. I suppose the *in*struction is about fifteen or twenty feet wide?

A. Yes, sir.

Q. Could any one travel on the top of it when it is above water to the end of the dike?

A. Yes, sir.

Q. On foot?

A. Yes, sir.

Q. With a vehicle he could not?

A. Yes, sir.

Q. Could one wagon pass another wagon?

A. I will not be positive whether it limits one wagon or not.

Q. What is the distance on this spur dyke from the water's edge of Destrahan eastwardly to the eastern end of the dyke?

A. Quite a distance.

Q. A thousand feet?

A. I do not think it is that far.

Q. Five hundred feet?

A. Somewhere along like that.

Q. This dike was built by the city of St. Louis?

A. I think so.

Q. About what year?

A. That dyke was there——

284 Q. When did you first know it?

A. My recollection is, in 1857 or 1858.

Q. You knew it then?

A. Yes, sir.

Q. Was it built some years prior to those years?

A. I do not know how many years.

Q. When did you know it was a dike?

A. My recollection is they were working that very year. I believe, if my recollection serves me, that teams would go up there with rock to keep the sand from washing away. There was a road by which a person could drive out or proceed to the end of the dike.

Q. Did the city put some posts up there?

A. I put the*n* there by getting permission from the city.

Q. You say the dike run down from the water works to North Market, the longitudinal dike?

A. Yes, sir.

Q. How far east of the end of the dike you speak of was it—did it commence—the eastern end of the dike?

A. It ran southward down as far as North Market street. It may have run farther.

Q. The longitudinal dike, was that out of the water?

A. Yes, sir.

Q. Is it out of water now?

A. Yes, sir.

Q. At ordinary stage of water?

A. I will not say that. It takes nine feet on the gauge to go over the top of it, and we consider that rather a medium stage.

Q. Do the boats raft over the longitudinal dike to the shore?

A. Not except in high water.

Q. You have spoken about boats and rafts and lumber being ties up on the water and river front ever since 1857. Do you mean tied by the longitudinal dike or shore of the Mississippi river?

A. That longitudinal dike was not built at the time I spoke of so many rafts going in there, and I know of years we used to have a good deal of trouble in getting logs there.

Q. When was the longitudinal dike built?

285 A. I do not remember.

Q. Do you remember if it was after the spur dyke was built?

A. Yes; no doubt about that.

Q. Four or five years after?

A. I should not be surprised.

Q. If the longitudinal dike extended southward with the Mississippi river, you say the boats and rafts did not land on shore except there being high water?

A. They could not go over except at high stages of water. That is the time lumber rafts arrived here—during the period of high water.

Q. At such times they floated over the longitudinal dike to the shore?

A. Yes, sir.

Q. This longitudinal dike and spur dike acts as a fence in the operation of the waters of the Mississippi river?

A. I think so.

Q. In front of this property and adjacent property?

A. Yes, sir.

Q. And the result of turning that water was that finally the earth filled it up and as it is there today?

A. Yes, sir.

Q. Is the longitudinal dike opposite what is known as the Sweringen property? Is that right on the water's edge today?

A. Yes, sir—yes; very near it.

Q. Is it not a fact on the eastern end of the Sweringen land today you will come on this rocky formation?

A. The rock is outside now.

Q. So far as this particular land in controversy is concerned, the effect produced by the longitudinal and the other dike was to make ground right from the river shore where it there existed thirty or forty feet—was to produce solid ground all the way. The dike is at the water's edge now. Back of it is all solid ground?

A. Yes, sir.

Q. The longitudinal and spur dikes—the effect has been to build up the ground?

A. Yes, sir.

286 Q. This occupation you speak of up there, you were not claiming to occupy any ground belonging to Mrs. Sweringen?

Mr. ALLEN: We object to that; that is a question of law.

COURT: Objection overruled.

To which ruling of the court the defendant then and there excepted.

WITNESS: I claim nothing more than the Buchanan title, the Buchanan lease.

Q. Did you occupy what is shown on this plat, this lot # 4, that—that was the original lease?

A. Yes; we had that.

Q. Lot # 4 in the original lease?

A. Yes, sir.

Q. From 2nd street east and from Angelrod right to the southern boundary of the Buchanan estate, you occupied that under that lease?

A. Yes, sir.

Q. Did you occupy lot 4 under that lease?

A. Yes, sir.

Q. And only by virtue of that lease did you occupy lot 4?

A. We had McPheeters' and Crosby's lease after that.

Q. When, if ever, did you occupy lot # 4 under another lease?

A. She got another quantity of land all marked # 4 that I occupied. I cannot tell about the particular lot.

Q. You cannot say you occupied that?

A. I occupied it under the original lease.

Q. You went as far as any land was?

A. I cannot tell whether that was there or not. We did not survey it.

Q. You did not occupy any land under the surface of the water, did you?

A. No.

Q. Can you tell about what year, if you were in possession, if at all, that part of share # 4 as shown there, that accretion?

A. You mean that particular lot.

Q. Can you state whether you were ever in possession?

A. I will not say that.

Q. This Rocky branch is now built up as a sewer?

287 A. The mouth is, I think.

Q How far westward does the sewer run?

A. Up to Hall street.

Q. To Hall street?

A. Yes, sir.

Q. How many feet is that from the water's edge—Hall street; how many feet does that sewer extend from the water's edge to Hall street?

A. About twelve hundred feet.

Q. The sewer runs twelve hundred feet westward?

A. The distance between 2nd and Hall street; that would take—that will be about seven hundred feet.

Q. All of Rocky branch east of Kennett is covered by the sewer?

A. I think not. I think the branch comes in the mouth of it.

Q. The sewer runs as far as Kennett?

A. Yes, sir.

Q. All of the branch east of Kennett is covered by the sewer?

A. I think the mouth of the branch is below the sewer. That is my recollection.

Q. You say the branch don't run perfectly straight?

A. Branch street is east and west.

Q. You are speaking about the Branch Street sewer, and I am talking about the sewer that covers Rocky branch, that has been inclosed in a sewer.

A. I think it runs across it. I do not think it follows Rocky branch. The water formerly in low water flows through the Rocky Branch sewer.

Q. Does not Rocky branch commence as far west as Kennett?

A. That is where it crosses it. That is my recollection. I will not be sure.

Q. From Kennett street the sewer proceeds to the Mississippi river and carries waters that formerly flowed in the Rocky branch?

A. Yes, sir. I want to correct myself. I am not positive whether the mouth of Rocky branch is as far south as Branch street or not.

Mr. BELL: That is not the question. I am asking whether the sewer known as Rocky Branch sewer extends from Kennett
288 street to the water's edge of the Mississippi river.

A. Yes, sir.

Q. And through the sewer water flows that formerly flowed through Rocky branch?

A. Yes, sir.

Q. The water — is discharged by Rocky branch is covered by a sewer now as far west as Kennett street, known as Rocky Branch sewer?

A. Yes, sir.

Q. That sewer runs in straight lines?

A. It runs in straight lines.

Q. Mr. Liebke, you do not claim that your logs ever occupied any part of the ground sued for in this case?

Mr. ALLEN: We object to that. You are assuming that he knows what is the grounds.

The COURT: Objection overruled.

To which ruling of the court the defendants then and there excepted.

A. I do not know what you are suing for.

Q. We are suing for Mrs. Sweringen's property between the two lead-pencil lines (referring to copy of plat of Buchanan's addition)—east of there. We are not suing for any west of that line. We are suing for ground bounded west by that line and be-

tween these lines to the Mississippi river (here indicating to witness where ground is on plat of Buchanan's addition).

To which question defendants entered an objection.

A. We never claimed that ground. There might have been logs on there, but we did not place any logs there on purpose.

Q. This Buchanan ground you occupied, you never occupied any ground there east of this land I have showed you on the plat; your ground was all to the west of it, was it not? Here is the plat, there is the line along there. Your occupation was west of that line always, was it not?

A. West of this river line.

Q. Your occupation was west of that line? I am not speak-
289 ing from north to south, but west of that line.

A. West of the railroad and part east, to-.

Q. Did you ever occupy any ground east of the railroad?

A. Yes, sir.

WITNESS: You have reference only to the ninety feet?

Mr. BELL: Yes; I have reference to only the ninety feet.

A. I would not like to answer yes or no. I might have.

Q. If you have done so, I will ask whether it was intentional.

A. I do not think so.

Q. Nor had you any intention of claiming the title or anything of that sort?

A. No; because I did not occupy it with any intention of claiming it.

Q. Mr. Liebke, describe a little more specifically what this occupation consisted of Were logs placed on the ground?

A. Yes, sir.

Q. Did you cut any logs?

A. Not down there.

Q. It consisted entirely of logs being brought to the city to be sawed into lumber?

A. Yes, sir.

Q. Logs taken from rafts?

A. Rafts and barges.

Q. These rafts ordinarily are rafted during high water, along in the spring, in May and June?

A. Yes, sir.

Q. When the logs were hauled off the land you speak of they were taken from there to the saw-mill?

A. That is the way. We get the benefit of navigation until the close of navigation. Our aim is to get the logs, and get enough stored on the ground; that is the use made of the ground. We get a stock of logs in the early spring until the new logs arrive again.

Q. As soon as the logs arrive and — placed on the ground they commence to remove them to the saw-mill?

A. They are there sometimes six or eight or nine months, according to what the saw-mills are doing. We get logs ahead.

290 Q. You get logs six or nine months ahead?

A. Yes, sir.

Q. When logs arrive during high water in spring there are already others logs in the same ground waiting to be sawed?

A. If not sawed, they are still there.

Q. There are always logs there to be sawed up when the other logs arrive, or has it been the case when logs arrive the ground is vacant and then you occupy it?

A. Yes, sir.

Q. That has often been the case?

A. It has occurred; not often.

Q. This occupation of the logs was entirely temporary in character until they are needed by the saw-mill?

A. Yes, sir.

Q. From year to year, as long as this practice continued, the logs were only temporarily placed on this ground until needed at the saw-mill, when they were hauled there and sawed?

A. That is right.

Q. The occupation was continually changing, old logs were taken off and new logs were brought in, and in that manner the land was used?

A. Yes, sir; except, for instance, where we would have a yard for old logs we would hold a lot of logs to cut up special logs for special lengths. We have got logs in our yards four years old and lying in the same place.

Q. With reference to the bulk of them, they were used shortly after they were brought on the ground?

A. Within six or eight months.

Q. I mean this case of logs-sawing, four or five years is exceptionable in character?

A. Yes, sir.

Q. Did the logs cover the entire surface of the ground or piled up in piles, or what was done?

A. When they came in rafts they were spread over the ground single deep; sometimes they were piled two and three high when we did not have room enough to scatter them all over the ground.

291 Q. And then taken from the yard with a wagon to the saw-mill?

A. They were hauled on wheels to the saw-mill.

Q. Where is the location of the saw-mill?

A. That is 2nd and Buchanan streets. We own and lease all the ground between 2nd and the river and Angelrodt and the southern line of the Buchanan estate. At times every foot is used, and times we did not use all of it.

Q. Are your yards fenced?

A. No, sir; some of the ground is fenced.

Redirect examination by CHARLES CLAFFLIN ALLEN, Esq.:

Q. Mr. Liebke, you said something about not holding any of this property adversely to Mrs. Sweringen. Did Mrs. Sweringen ever make any claim to you for this property until the last two or three years?

A. She never made any up to date.

Q. You were occupying this property as you have described it under a lease from Buchanan to the southern boundary of the estate?

A. Yes, sir.

Q. You were holding this property at that time under a lease from Buchanan heirs?

A. Buchanan heirs; yes, sir.

WITNESS: What property do you mean?

Mr. ALLEN: I mean the Buchanan estate.

Ans. We had it all with the exception of when the lease expired, as I said before, when # 5—I think that was sold.

Mr. DRABELLE: Sold to Mr. Lewis?

A. I think it was.

Mr. ALLEN: I understand you to say that you followed the line of the river as it advanced from 1866?

A. After that.

Q. You followed it down there to what is marked on the plat shown you by Mr. Bell as W. L., the present wharf, which, I suppose, means the western line of the wharf—you followed the river down there?

A. If I was sure when that wharf was built, I could tell more about it—when that dike was built, I mean.

292 Q. This plat which Mr. Bell has question- you about being the copy of the Buchanan partition, this line where the river was then in 1866, you occupied all down to that?

A. Yes, sir.

Q. And as far west of the green and red line, you occupied everything in 1866 after that, of the Buchanan estate, with the exception of that # 5?

A. Yes, sir.

Q. You leased that and occupy under that lease today?

A. A part of it.

Q. Where Mr. Bell called your attention to the land, east of which you said you had not occupied with logs, he pointed out this land here on the east side of what is now city block 2544 and marked W. L. of the present wharf?

A. I think that was it—the west line of the wharf.

Q. That is the line east of which you did not have your logs?

A. I might have went there at times, but not intentionally, because we had no occasion to go there; we had plenty of room.

Q. You were called upon to identify the land which Mr. Bell pointed out to you as the land east of which you had not occupied, was the land here marked on this plat W. L. of present wharf?

A. That is what I understood him to say.

Defendants here offer the copy of plat of Buchanan's addition, from which Mr. Liebke testified.

(Here follows map marked p. 293.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

294 JAMES M. MONTGOMERY, being duly sworn on behalf of defendant-, testified as follows:

Direct examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. State your full name.
A. James M. Montgomery.
Q. State your residence.
A. Alton, Illinois.
Q. How old are you?
A. Sixty-two.
Q. What is your occupation?
A. Steamboat pilot.
Q. How long have you been in the business?
A. I have been pilot since 1857.
Q. Since 1857?
A. Yes, sir.
Q. On what river?
A. Mississippi river.
Q. What part; northern or southern?
A. Northern.
Q. That is to say, the Upper Mississippi river, running from St. Louis north?
A. Yes, sir.
Q. During all that time have you been a pilot?
A. Yes, sir.
Q. Have you been familiar with the river?
A. Yes, sir.
Q. Do you know where Bissell's point is?
A. Yes, sir.
Q. Do you know where the neighborhood of North Market street is?
A. Yes, sir.
Q. Bissell's point is north of North Market street?
A. Yes, sir.
Q. Where is Dock street, if you know?
A. I do not know all the streets by name.
Q. Do you know where Captain Liebke landed his logs?
A. Yes, sir.
Q. How long have you known it?
A. I have known it—I have paid attention to it—I know it before—well, say twenty-one or twenty-two years.
Q. State what was the shape of the land with reference to the river from Bissell's point south to about North Market when you first knew of it.
295 A. There was quite a little bend there. It ran—it started at Bissell's point and ran down. It started at Bissell's point and ran down below North Market street. The deepest part in the bend, I think, was a little above Liebke.
Q. You say the deepest part of the bend. You mean the point furthest in the shore?
A. Yes, sir.

Q. What river men call the bight of the bend?
A. Yes, sir.
Q. Will you state what, if anything, you know of the landing of boats, barges, rafts, or any river craft between that time and the present time?
A. We used to—once and awhile boats would stop there and get raft-men's kit-; maybe fifteen or twenty; sometimes more than that; think a raft amounts to about twenty men and their lines.
Q. Do you know where Rocky branch is?
A. No, sir.
Q. Do you know Horse creek?
A. No, sir.
Q. Do you know of any creek running in south of Horse creek, on Gin Grass creek?
A. No, sir.
Q. Do you know whether or not there is any branch or creek that runs a little south of Gin Grass creek?
A. I do not have any recollection to that.
Q. With reference to Liebke's log run and mill, do you know where that was?
A. Yes, sir.
Q. State what you know about the landing of any rafts.
A. Rafts used to come—rafts all floated down there—and always landing along in there.
Q. Most of the landing is in that neighborhood?
A. From Bissell's point, about North Market, along there.
Q. What was the condition of the water there?
A. Sometimes the channel of the river would be around that shore—around that point—and then at other times in the middle of the river, and at other times on the east side of the river.
296 Q. In reference to the bend below Bissell's point, in this bend was there at any time and eddy?
Q. There was an eddy around there pretty much all the time.
Q. Just state the value of landing there, if any.
—. Behind the eddy there was slack water.
Q. I will ask whether rafts are safer in a channel or slack water.
A. Slack water; it is easier to check and hold them in slack water than in stronger water.
Q. State whether or not you know of any rafts being landed at the site of Liebke's log run.
A. I think quite a number of rafts were landed there.
Q. Was that in the channel or slack water?
A. Slack water.
Q. There is a lumber yard there, is there not?
A. Yes, sir.
Q. And quite a number of rafts landed there?
A. Yes, sir.
Q. How has that been, beginning with your knowledge in 1857—has it been continuously or at intervals?
A. Continually.
Q. From 1857 down to the present time?

A. Yes, sir.

Q. State whether any barges or boats ever landed. I understood you to say your boat sometimes landed to take on what is called raftsmen's kits, lines, &c.

A. Yes, sir.

Q. Do you know anything about any barge—have any barges of late years landed there?

A. A great many.

Q. Do you know anything about any dikes attracting your attention in the vicinity of Liebke's log run?

A. There used to be a dike above there.

Q. What kind of a dike?

A. A stone dike.

Q. Which way did it extend, into the river or along the river?

A. Into the river.

Q. Do you remember how long that has been there?

A. No; I do not. I think the dike was built there, the best of my recollection—I think it was built there in 1858; maybe I am mistaken.

297 Q. That is the spur dike?

A. The spur dike.

Q. Was it above or below the log run?

A. Above the log run.

Q. Near or far?

A. I suppose it was between twelve and fifteen hundred feet.

Q. Do you know anything about — we call the longitudinal dike?

A. I know one is up in there. I paid no special attention to it.

Q. You say it is there?

A. Yes, sir.

Q. Along the bank of the river extending from where north?

A. From Bissell's point down below North Market.

Q. From Bissell's point southward below North Market?

A. Yes, sir.

Cross-examination by LEVERETT BELL, Esq.:

Q. Captain, are you in the steamboat business now?

A. Yes, sir.

Q. Between here and Alton?

A. Yes, sir.

Q. Were you in that trade last year?

A. Yes, sir.

Q. How long have you been contin-ously in that trade?

A. Yes, sir.

Q. Before that time where were you running?

A. To Keokuk.

Q. This dike you speak of so much is at the foot of Destrahan street?

A. I do not know anything about streets. I do not know the names of them.

Q. But it is at the foot of a street, about twelve or fourteen hundred feet north of Liebke's mill?

A. Yes, sir.

Q. And the dike extended eastwardly into the Mississippi river from the foot of this street?

A. Yes, sir.

Q. You do not know whether it is a street or not?

A. Exactly; I never paid any attention to the streets.

Q. Did you ever see any vehicles on it?

A. I noticed—I seen a wagon on that dike when hauling stone.

Q. Have you seen a wagon out there since the dike was completed?

A. No.

298 Q. The dike started from the foot of this water's edge and proceeded eastwardly in the Mississippi river about six hundred feet, didn't it?

A. It might have been that much and not as much and a little more.

Q. What is your best judgment?

A. Between six and seven hundred feet.

—. ——?

A. Yes, sir.

Q. It is built of stone?

A. Yes, sir.

Q. There is a stone bottom in the river and it was finally raised above the surface of the water?

A. Yes, sir.

Q. I suppose the structure is fifteen or twenty feet wide?

A. Yes, sir.

Q. And it was all made by placing loose stone in the river until it was raised above the water?

A. Yes, sir.

Q. At the end of this dike there is a longitudinal dike extending north and south of the spur dike and extending as far south as North Market?

A. Yes, sir.

Q. And as far north as the water works?

A. Yes, sir.

Q. And that dike is built in the same manner by placing stones in the Mississippi river?

A. That was not built in the same manner. That dike was built by having barges along there and throwing the stone off the barges.

Q. Into the water?

A. Yes, sir.

Q. But still it was built of stone placed in the waters of the Mississippi river and rising gradually until it was above the water?

A. Yes, sir.

Q. That dike was also a structure of about twenty-five or thirty feet wide?

A. I never noticed.

Q. It was wider on the bottom than on the top?

A. Yes, sir.
Q. How wide was it on top?
A. Some places it looked like it was five or six feet wide.
Q. You never stopped there, did you?
A. Just looked at it while passing.
299 Q. The effect produced by these two dikes was to shoal the water inside of the longitudinal dike up to the water's edge?
A. Yes.
Q. And it made land?
A. Yes, sir.
Q. And finally the land below was above the surface of the water?
A. Yes, sir.
Q. And so today you can start at a point west and walk on made ground to this longitudinal dike?
A. I do not know.
Q. You have not been on the ground?
A. No; I could only tell by passing up and down the river.
Q. Is it not the general effect produced by these dikes to fill up what was formerly the bottom of the river?
A. Yes, sir.
Q. Now where dry ground exists?
A. Yes, sir.
Q. When you speak of boats landing there and landing their rafts going there and barges going there, you mean, of course, that they went on navigable water of the Mississippi river—that is, navigable to the shore?
A. Yes, sir.
Q. And all of these times you speak of, the water of the Mississippi river was navigable up to the shore?
A. A fall comes pretty quick, unless it was filled with seven or eight feet after high water.
Q. When the high water comes the dikes are all submerged, and when the water falls the deposit is left within the dike?
A. Yes, sir.
Q. And this ground is made?
A. Yes, sir.
Q. Whenever a steamboat went in there, it went on what is navigable water?
A. Yes, sir.
Q. That longitudinal dike did not appear above the surface of the water in high water?
A. It was low-water water. Sometimes it was navigable over the longitudinal dike.
300 Q. We understand your testimony to be that whenever a steamboat went to the bank of the river it went on navigable water of the Mississippi river?
A. Yes, sir.
Q. This occupation by steamboats or rafts was only temporary in its character?

A. Yes, sir.

Q. They came in one hour and, perhaps, went away another hour?

A. Yes, sir.

Q. Rafts would come there and the raft would lay in the water until the logs were hauled on dry land; and was that the same with barges and all that sort of thing?

A. Yes, sir.

Redirect examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. The boats navigated on water; they tied up there? They did not land there; they tied up?

A. Yes, sir.

Q. The boat remained floating in the water?

A. Yes, sir.

Q. But the rafts did land sometimes?

A. Yes, sir; they would go there in high water, and when the river would fall they would be there on dry land. Rafts do not go in a few minutes. The boats get away.

Q. The rafts would stay until taken apart, unloaded by persons, wagons, or something else?

A. Yes, sir.

Q. How long would rafts lay there?

A. I cannot tell how that would be. I did not pay attention.

JOHN H. MACBRIDE, being duly sworn on behalf of defendants, testified as follows:

Direct examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. State your full name, please.

A. John H. MacBride.

Q. What is your age?

A. I am past seventy-two.

Q. What is your occupation?

A. Steamboatman.

Q. In which capacity?

A. Pilot, pilot.

Q. On what part of the Mississippi river have you been a pilot?

A. I have piloted from St. Louis to Rock island and to New Orleans.

301 Q. Both up and down the river?

A. Yes, sir.

Q. How long have you been familiar with the upper Mississippi river or from the center of the city, here on the levee, or Washington avenue northward past the present city limits?

A. Something over fifty years.

Q. When did your acquaintance first begin with the Mississippi river?

A. In 1843.

Q. In 1843?

A. In the spring of 1843.

Q. What was your experience after that, and how long did it continue?

A. I have been steamboat-rafting and steamboating together right straight along.

Q. You have been a raftman?

A. Yes, sir.

Q. Are you familiar with that part of the city from Bissell's point south to the neighborhood of North Market street?

A. I am not so familiar with it now as I have been formerly.

Q. When were you familiar with it?

A. Back in 1840 and 1850.

Q. What was the contour of the land in that vicinity in 1843, when you first saw it?

A. The land was then *was* some distance from where it is now.

Mr. BELL: Westward?

A. Yes, sir.

Mr. ALLEN: With reference to there being a bend?

A. Yes; at Bissell's point there was rather a sharp bend.

Q. Are you familiar with the streets up there?

A. I am when on shore, but cannot tell where they would strike the river now.

Q. Can you tell about where the center of this bend was, or bight of the bend, as steamboatmen say?

A. I think it was near, to the best of my recollection, about the mouth of Rocky branch.

Q. You knew Rocky branch?

A. Yes, sir.

Q. That was about the middle of the bend when you first knew it?

A. Yes, sir.

302 Q. What was the condition of the water as to being a swift current or slack or an eddy?

A. The water in there was slack.

Q. With reference to rafting, what effect did that have?

A. You had to have slack water to land rafts. You could not land in a strong current, and could not check them, and they always went in Hoise Creek eddy, not being a regular eddy, there was slack water so you could check the rafts.

Q. Hoise Creek eddy, what is the other name?

A. Gin Grass.

Q. Gin Grass creek is a short distance north of Rocky branch, is it not?

A. Yes, sir.

Q. This place or bend went by the name of Hoise Creek eddy?

A. It was always known to river men and steamboatmen as Hoise Creek eddy.

Q. What do you know about landing of rafts at the mouth of Rocky branch, and when did you first know that fact?

A. I never saw any rafts landed in the mouth of the Rocky branch, but I have seen them landed above there and below there. There

has been rafts landed there ever since I came on the river. It used to be the only landing place for a raft—the only place a raft could be landed in the city of St. Louis.

Q. Did you ever have any experience yourself in rafting—going into that?

A. I landed a good many rafts in there myself.

Q. At what period of time was that?

A. Most of the rafts I ever landed in there was in 1850; along about from 1848 to 1852.

Q. Then, do you know anything about any steamboats or barges, whether they ever landed in the period of time from then until now?

A. In 1866 no steamboats or barges landed there; there was nothing for them to do.

Q. Rafts did not come down on steamboats?

A. No, sir.

Q. Did you ever go in there for a raftsman kit?

A. No, sir; never.

303 Q. Do you know anything about the spur dike in the vicinity of Destrahan street?

A. Yes; know one was built there, along back. I cannot say exactly when it commenced.

Q. But it came out the river where it is at present, at right angles with the shore?

A. Yes, sir.

Q. Can you tell about what time that was?

A. I do not believe I can. It was before the war.

Q. Do you know anything about the longitudinal dike extending southward?

A. I know the dike is there; that it was built there—most of it since the war. It is about Mound street, as near as I can recollect, to Destrahan street. There were other spur dikes below that.

Q. Below Destrahan?

A. Yes, sir.

Q. Where were they?

A. One on Montgomery street and one at North Market, and I believe there was one at the foot of Webster Str. Yes; I know there was.

Cross-examination by LEVERETT BELL, Esq.:

Q. What boat are you *own* now?

A. Not any.

Q. What boat last season?

A. I was on several different boats. The last boat I was on was the Ruth, running up above.

Q. Were you engaged last season in navigating north of St. Louis?

A. Not much.

Q. Season before that?

A. I was the season before that. I was running up and down

the river every year. I usually run on the D. H. Pike, and also I ran up the Illinois river.

Q. I understood you to say part of your experience was between St. Louis and New Orleans and another part between St. Louis and northern points.

A. I know the river from Rock Island to New Orleans.

Q. The spur dike you spoke of was a dike put out from the foot of Destrahan and built eastwardly in the Mississippi river?

A. Yes, sir.

304 Q. And went out some distance—five or six hundred feet—east of the water's edge?

A. It would be merely guesswork on my part; I should say more than six hundred feet.

Q. As much as a thousand feet?

A. Yes, sir.

Q. It went out from the foot of Destrahan street about a thousand feet eastwardly?

A. Yes, sir.

Q. That dike was built by placing loose stone in the river, one above the other, until a wall was raised above the water?

A. Of course; that is the only way a dike is built, by piling rock into the river.

Q. That method was adopted?

A. Yes, sir.

Q. How wide was it on top?

A. I have no idea.

Q. How wide at the bottom?

A. I cannot tell; I never measured it.

Q. Was it wider on the bottom than on top?

A. Yes, sir.

Q. The base was wider than the top?

A. Yes, sir.

Q. Did you ever see a wagon or vehicle on it?

A. I don't remember.

Q. It is practically an extension of Destrahan street eastwardly a thousand feet in the Mississippi river?

A. Yes, sir.

Q. Then a dike was built from Bissell's point to North Market. You say a dike was built from Bissell's point?

A. I do not know of any dike built at Bissells point. I know of one at Destr-han.

Q. The testimony of some of the witness was it extended as far north as Bissell's point and proceeded south to North Market; you know at least it was from Destrahan—the east end of it?

A. It commenced south and was built up the river.

Q. It was a dike extending from the east end of Destrahan southward to about North Market?

A. To Main street.

Q. That dike was built of stone also?

A. Yes, sir.

Q. And there never was a time that the top of the dike at
305 ordinary stage of the Miss. river was above the water?
A. At ordinary stage? *A.* Yes, sir.

Q. The effect of those dikes was to destroy the current of the river inside of them and to cause a settling of the sediment on the bottom?

A. That is my understanding. The effect of building those dikes was in order to get out into deep waters and to make a shore from Main street to near towards Bissells street.

Q. What was the effect? It resulted in dry land west of the dike, did it not?

A. Of course, I do not know the water turned into dry land.

Q. The dry land of the Missouri shore is bounded eastwardly by the longitudinal dike?

A. Yes, sir.

Q. So that what was at the time these dikes were built a large body of water in the bend spoken of is now dry ground?

A. Yes, sir.

Q. The operation of the dike generally has been that in times of high water there would be a settlement when the water would fall, and that has been going on until the bottom of the river has appeared?

A. I did not know the bottom of the river is above the water.

Q. Where the bottom of the river existed—where it was navigable—it is now dry land?

A. Yes, sir.

Mr. BELL: I think there should be a limit of these witnesses. We have no testimony to rebut anything said by these two river captains. We will introduce no evidence to contradict these river captains.

HERMAN RICHTIEN, being duly sworn on behalf of defendants, testified as follows:

Direct examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. State your full name.

A. Herman Richtien.

Q. Now, do you know when the longitudinal dike from Destrahan street south to North Market—when it was put in and who put it in?

306 A. Yes, sir; from Mound to Bissell's point.

Q. When was it made?

A. I think it was started in 1864. It took about two years to complete it. The Sheehans had *to* contract of doing the work.

Mr. ROBERT: From whom?

A. From the city; I did the towing.

Q. What do you mean by towing?

—. Carrying the rock. They had barges which took it up there.

Q. The rock was put in the dike?

A. Yes, sir.

Q. How far did you say that dike extended southward?
A. To Mound street, a little below.
Q. To Bissell's point?
A. Yes, sir.
Q. At that time was the spur dike in Destrahan street?
A. No spur dike was made at Destrahan street. The spur dike was up at Mound street, and there was a smaller one somewhere in that neighborhood, but it was not built so high, except the one at Montgomery; that was built high, so was Mound street.

Cross-examination by LEVERETT BELL, Esq.:

Q. Did this north and south dike connect with the Destrahan Street dike at its eastern extremity?
A. Yes, sir.
Q. And with the other dikes?
A. Yes.
—. Montgomery and Mound Street dike built first?
A. Yes, sir.
Q. And that projected from the water's edge at the foot of Destrahan street, about a thousand feet in the Mississippi river?
A. A little more than a thousand feet—that is, from 2nd street.
Q. Where was the water's edge at Destrahan street, with reference to 2nd street, at the time the dike was commenced?
A. The water used to come to 2nd street.
Q. Destrahan Street dike was a rocky structure, extending from the water's edge, at the foot of Destrahan street, a thousand feet in the Mississippi river?
A. It was not built of rock altogether.
Q. What was it built of?
307 A. Some dirt and clay; that is the first beginning, and then afterwards rock.
Q. Mostly of rock?
A. Yes, sir.
Q. Thrown in the water and brought above the surface of the water?
A. At ordinary stage.
Q. In periods of high water was the water over the dike?
A. Yes.
Q. After the dike was built could persons drive out on it with vehicles?
A. In ordinary stages.
Q. Was there room for one vehicle to pass another?
A. Yes, sir.
Q. With reference to the longitudinal dike that ran southward from the end of Destrahan street, what was that constructed of?
A. That was built of rock.
Q. Rock also?
A. Yes, sir.
Q. Was that above the ordinary stage of water in the Mississippi or below it?

A. There was a change once in a while of the current of the Mississippi. It changes from one side to another. I have seen deep water all along there in a bend called an eddy. Then I seen a big sand bar between the two.

Q. At ordinary stage?

A. There was a good stage of water.

Q. Prior to the building of these dikes there was quite a bend to the west of the Mississippi river?

A. Yes; considerable.

Q. This longitudinal dike practically ran from the south end of the bend to the north end of the bend, did it not?

A. Yes, sir.

Q. What effect did this dike create on the land contained in that bend of the river?

A. Shut the current off, and then keep the current on the outside, except in high water, when it would go clear over.

Q. What effect did it produce on the surface of the earth in reference to making ground?

A. At every high water it would fill it up—leave a river sediment there.

308 Q. Did it result in changing the water's edge from where it was before the longitudinal dike was built to the longitudinal dike?

A. It is a natural bridge.

Q. Where is the water's edge today?

A. There is a bar there now, very close up and down the land——

Q. But inside of this dike that was formerly navigable water it became dry land?

A. Yes, sir.

Q. That is the condition of it today?

A. Dry land is there now, except a small piece that goes through the railroad track. Sometimes the water stands, but not to amount to anything.

Q. The general result is that the water's edge formerly represented by a line curved to the west is now represented by a straight line?

A. Yes, sir.

JULIUS MOULTON, being duly sworn on behalf of defendants, testified as follows:

Direct examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. State your full name.

A. Julius Moulton.

Q. What is your position, sir?

A. I am engineer in the harbor and wharf department of the city.

Q. How long have you held that position?

A. Since the fall of 1893.

Q. You are by profession, then, a civil engineer?

A. Yes, sir.

Q. Also a practical surveyor?

A. Yes; I have done considerable surveying.

Q. State whether or not as engineer of the harbor and wharf department you did any surveying with reference to the establishing of the wharf line and the wharf between Dock and Buchanan streets.

A. Yes, sir; I made a survey of that part of the wharf in the fall of 1883, and also in 1884.

309 Q. In the fall of 1883 and 1884?

A. Yes, sir.

Q. Did you make any survey of the city north of Dock?

A. I continued the survey on down to Anna streets.

Q. That is in the city, is it not?

A. Yes; that is in the southern part of the city.

Q. How far north did you go?

A. I went as far north as the water works.

Q. Mr. Moulton, state if anything you did with reference to fixing monuments and attracting your attention particularly to the neighborhood of Dock and Buchanan street.

A. After making the survey the stakes were removed and stones put in the places along, perhaps, about a year or year and a half after the survey was made.

Q. Where did you place your stakes? And, if so, state with reference to Dock and the wharf.

A. The corners were the places, according to the directions laid down in the ordinance for establishing the——

Q. What ordinance do you refer to?

A. Ordinance 5403 for opening and establishing the wharf, passed and approved August 6th, 1864.

Q. Directing your attention to this plat, which is known as plat # 1 and produced by the plaintiff, can you indicate where on that plat you placed the corner-stones of Dock and the west line of the wharf?

A. We placed one stone on the northwest corner of what would be the west line of the wharf and Dock street and one on the southwest corner of—that is, further to the west and south of Dock street.

Q. You placed one at what corresponds to the northwest corner of Dock street and the wharf?

A. Yes, sir.

Mr. ROBERT: Being the southeast corner of city block 2544.

Mr. ALLEN: I beg to call your attention—in the absence of the so-called field-notes of Mr. Joyce. Describe once more where you placed the stones besides the northwest corner of Dock street

310 and the wharf.

A. One was on the southwest corner of Dock and one in the north line of Dock, where the west wharf line proceeds northward.

Mr. ROBERT: Which side line?

A. The eastern line of city block 661 E., going northward from the northwest corner of Dock street and the west line of the wharf.

Q. Where did you place the next stone?

A. One at the intersection *and* the south line of Buchanan street

and one at the intersection of the north line of Buchanan and the west wharf line.

Q. The one on the south line of Buchanan street and the wharf would be at the northeast corner of block 2544?

A. The wharf line is now the line connecting the stone at the southeast corner of city block 2544 and that which is on Dock street and the wharf.

Q. The stone on the northeast corner of block 2544, being on Buchanan and the west line of the wharf—what line is that?

A. That is the line established by ordinance 5403, called the west wharf line.

Q. With reference to city block 2544, what line is it?

A. The eastern line of that block.

Q. How far is that eastern line of block 2544, which you designate as the western line of the wharf, from what is here marked—marked on plat #1, introduced by plaintiff, as the Chicago, Burlington and Quincy R. R.?

A. The eastern line of block 2544 would be eleven feet west of this inclosed line—this space.

Q. From what street to what street?

A. Between Dock street and Buchanan street.

Q. And passing across the entire eastern side of block 2544?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Do you know the property Mr. Joy leased from the city?

A. Yes, sir; I surveyed the boundaries of the lease.

Q. Is it possible to indicate it on that plat?

311 Mr. ROBERT: Does it include the land in controversy?

A. Yes; not all of it. It includes that portion east of the Keokuk and Northwestern.

Q. Does it run to the wharf line?

A. He leased from the west line to the river.

Q. What does he pay per annum—what rent per annum?

Mr. BELL: We object. The instrument will show for itself.

Mr. ROBERT: If he knows what rent he pays, he can state.

Mr. ALLEN: I will ask if you know what Mr. Joy pays.

COURT: Objection overruled.

A. $600 for five years, and $1,200 the second five years, and the third five years at $1,800.

Q. How much land has he?

A. He has about 451 feet front.

Q. On the river?

A. Along the east wharf.

Q. And what is the date of the lease?

Mr. BELL: The lease will speak for itself.

COURT: Objection overruled.

A. April 9th, 1891.

Q. Is he in possession of any property west of the track?

—. ——.

Q. That is, a portion of this lease is also west of that 50-foot strip on plat # 1, lying adjacent to Dock street and extending southward 161 feet north of Dock. Does he occupy there from the west line to the river, or just from the railroad tracks to the river?

A. Just this strip.

COURT: That is the portion east of the railroad tracks?

A. Yes.

Mr. ALLEN: Just indicate as nearly as you can where Mr. Joy occupies.

A. The lease is from the south line of Dock, one piece southward 160 feet; than that strip eastwardly to this line (indicating the space occupied by the Chicago, Burlington and Quincy & *Quincy* railroad), and then the extension of that line across the wharf from the
312 east boundary line of the C., B. & Q. northwardly *northwardly* a distance of 451 feet.

Q. How much is there—square feet?

A. About 1,120 squares.

Q. How many acres?

A. I put it in squares.

COURT: How wide is it?

A. Four hundred feet long—280 feet. The size of the eastern parcel of this lease is 451 feet front on the water's edge by a depth westwardly 280 feet.

Q. That depth is not the same the entire front, is it?

—. The lease is divided into two parcels. One lease is east of the Q. right of way, and the other is west of it. The parcel east of it has a frontage of 451 feet on the river by a depth of 280 feet westwardly, and the parcel lying west of the Q. right of way has a frontage of 161 feet and a few inches by a depth of about the same.

Mr. DRABELLE: Making it altogether how many squares?

A. About 1,520 squares—152,000 square feet.

A. 152,000 square feet.

Q. What did you say that lease was for?

A. $600 for the first 5 years.

Q. $600 per annum?

A. Yes, sir; $1,200 for the second 5 years, and $1,800 per annum for the third 5 years.

Mr. DRABELLE:

Q. And the lease began when?

A. April 9th, 1891.

Cross-examination by LEVERETT BELL, Esq.:

Q. Mr. Moulton, what is the width of the strip of ground occupied by the Keokuk and Northwestern railway between Dock street and Buchanan?

A. They have about 40 feet now.

Q. Look on that plat. Here is the railroad down there; this is

Buchanan and this is Dock street. What is the width of the right of way occupied on the ground?

A. They occupy 40 feet in width.

Q. Is there any wharf existing between Dock and Buchanan street on the river front?

A. No wharf is built there.

313 Mr. ALLEN: We object to the question as calling for a conclusion.

COURT: Objection overruled.

To which ruling of the court the defendant then and there excepted.

Mr. BELL:

Q. Answer the question.

A. No, sir; not that I know of.

Q. How lately have you been on the ground?

A. I was there—I have been there the past three months.

Q. Within three months?

A. Yes, sir.

Q. When you were there last did you see anything of a wharf there?

Mr. ALLEN: We object to that.

Q. I will ask you whether there has actually been made on the ground any improvements in the nature of a wharf or anything of that sort that has been done by the city.

A. Nothing but the revetings.

Q. That is the old longitudinal dike spoken of by these witnesses?

A. Yes, sir.

Q. Is there any improvements of the wharf, and, if so, at what point north of Buchanan street—how far north of Buchanan street?

A. There is nothing but this revetment or dike.

Q. Nothing at all?

A. Except the ferry landing, built on Destrahan street.

Q. How many blocks north?

A. That is the third street, two blocks north.

Q. At what point south of this is there an improved wharf—what point south of the dike?

A. The improvement begins at Dock.

Q. It runs southward, but ends at Dock street, and does not proceed northward across to Buchanan?

A. No.

314 Q. Did you collect or ever collect any rent from Mr. Joy?

WITNESS: Personally, you mean?

Q. Yes.

WITNESS: No.

Q. How do you know what rent he is bound to pay?

A. By an agreement.

Q. What agreement? Do you mean all you know about the matter is what you read in the ordinance?

A. I know an agreement was drawn up.
Q. All you know is what you read in the ordinance and lease?
A. Yes, sir.
Q. Outside of that you have no knowledge?
A. No, sir.
Q. Do you know whether he pays any rent or not?
A. No; I do not know.
Q. You never collected a dollar of his rent?
A. No.
Q. Do you know under the lease it provides the lease may be terminated at any time with notice?
A. Yes, sir.
Q. The only information you have with reference to that matter is by reading the ordinance and lease.
A. Yes, sir.

Mr. BELL: We object to the testimony of this gentleman as to that point.

Mr. ALLEN: Mr. Moulton, you say the contract was written up in the office?
A. Yes, sir.
Q. Were you familiar with the negotiations or what was going on between Joy and the office?
A. I know he was applying for a lease, and that afterwards the result was a lease was drawn up in accordance with this ordinance and is on file in the office.
Q. You know that from your official position.
A. That is, a copy is on file in our office.
Q. Did you ever see Mr. Joy in the office?
A. Yes, sir.
Q. Did you ever hear any conversation with Mr. Joy?
315 A. I heard the questions spoken of.
Q. In the office?
A. Yes.
Q. While attending to duties of the office?
A. Yes, sir.
Q. What we are getting at, Mr. Moulton, is whether or not, in connection with your official duties there, you have any knowledge which is not derived from the mere reading of the lease itself in the transaction or by the ordinance.
A. I know Mr. Joy occupies that ground for business purposes.
Q. And you have been on the ground and surveyed the boundaries of the lease?
A. Yes, sir.
Q. Did you ever hear Mr. Joy say how much he was paying?

Mr. BELL: We object to that. I do not think it is competent.
COURT: If this witness knows what was paid outside of the written contract he can state, if he knows.
Mr. BELL: He only knows from the lease.
COURT: This witness gives testimony in answer to questions, and

on cross-examination it is developed his information was from the written contract. Now, then, it would be very unjust to the court to say to counsel that testimony should go in. I permitted it to go in on the theory that you gentlemen would show that he got this information outside of the ordinance and outside of the contract.

Mr. BELL: I move to strike out his testimony.

COURT: The motion is sustained.

To which ruling of the court the defendants then and there excepted.

COURT: As to the consideration for the lease stated by the witness, because it appears from the examination of the witness that he obtained his information from the ordinance and from the leases.

316 Mr. ROBERT: He did not object to the question, and therefore it is too late now.

COURT: What the witness said in reference to the consideration paid annually or paid for each period of five years—it was, I believe, $600, $1,200, and $1,800.

Mr. ALLEN: Mr. Moulton, can you get the original lease that is filed in the register's office—you can get a certified copy?

A. Yes.

Mr. ALLEN: I offer in evidence ordinance 5403, under which the last witness testified he made some surveys, entitled An ordinance to open a wharf from Biddle to the northern boundary of the city and Hazel to the southern boundary of the city, approved August 6th, 1864.

Mr. ALLEN: Will you admit in 1864 and after 1855 the northern boundary of the city was at a point north of Buchanan street?

Mr. JOHNSON: We want to object to this ordinance.

COURT: This is to establish a wharf from Biddle street to the northern boundary of the city, a point north of Dock street?

Mr. ALLEN: Yes, sir; the date of the ordinance is 6th of August, 1864.

COURT: What is your objection, Mr. Johnson?

Mr. JOHNSON: It is utterly irrelevant and immaterial for the reason no wharf has ever been there.

COURT: This is the ordinance under which the survey was made that Mr. Moulton testified to?

Mr. ALLEN: Yes; and established monuments in 1883 and 1884.

The objection was overruled.

Said ordinance was then read and is as follows:

(5403.)

An ordinance to establish and open the wharf from Biddle street to the northern boundary of the city and from Hazel street to the southern boundary of the city.

317 Be it ordained by the common council of the city of St. Louis:

SECTION 1. The wharf is hereby established as a public highway for wharf purposes, from the south side of Biddle street to the north-

ern boundary of the city of St. Louis; and from the south side of Hazel street to the southern boundary of the city of St. Louis, the western boundary line of the northern portion of the wharf, as herein established shall commence at a point in the south side of Biddle street at the northeastern corner of city block numbered nineteen; thence northwardly on a line in continuation of the eastern front line of city block number nineteen, to a point which is eighty feet eastwardly from Lewis street, measured on a line at right angles thereto; thence northwardly parallel with Lewis street and eighty feet eastwardly therefrom to the north side of *the* Smith street; thence northwardly to a point in the north side of Florida street, which point is three hundred and seventy-five feet eastwardly from Main or First street; thence northwardly to a point in the south side of East Mound street, which point is three hundred and thirty-seven and a half feet distant eastwardly from said First street; thence northwardly to a point in the north side of East Mound street, which point is three hundred and thirty-five feet distant eastwardly from said First street; thence northwardly to a point in the north side of Lebeaume street, which point is three hundred and thirty-five feet distant eastwardly from said First street; thence northwardly to a point in the south side of Dock street, which point is nine hundred and twelve feet distant eastwardly from said First street; thence northwardly in continuation of the last line, to the north side of Dock street; thence eastwardly along the north line of Dock street produced one hundred and fifty feet; thence northwardly to the northern boundary line of the city of St. Louis, on the line which passes a point in the center of Ferry street, which point is two thousand five hundred
318 feet distant eastwardly from said First street, measured along the center line of said Ferry street. The eastern boundary line of the said northern portion of the wharf, as herein established shall commence at a point in the south line of Biddle street produced eastwardly, two hundred and ten feet distant from the northeastern corner of city block number nineteen, thence northwardly to a point in the north line of Ashley street produced eastwardly, two hundred and thirty feet distant from the western line of the wharf as herein established; thence northwardly to a point in the north line of Smith street produced eastwardly, two hundred and thirty feet distant from the said western line of the wharf; thence northwardly to a point in the north line of East Mound street produced eastwardly, two hundred and sixty feet from the said western line of the wharf; thence northwardly to a point in the northern boundary line of the city of St. Louis, which point is three hundred feet distant eastwardly from the said western boundary line of the wharf. The western boundary line of *of* the southern portion of the wharf as herein established, shall commence at a point in the south side of Hazel street, which point is three hundred feet distant eastwardly at right angles from First or Main street; thence southwardly, parallel to said First street and the three hundred feet distant eastwardly therefrom, to a point in the southern boundary line of Rockpoint addition to the city of St. Louis; thence southwardly

to a point in the southern boundary line of the city of St. Louis, which point is six hundred and sixty feet distant on a course south eighty-one degrees east from the center of the main track of the Iron Mountain railroad. The eastern boundary line of the said southern portion of the wharf as herein established, shall commence at a point in the south line of Hazel street produced eastwardly, which point is five hundred and sixty-five feet eastwardly from said First street; thence southwardly to a point in the center line of
319 Lesperence street, which point is three hundred feet distant eastwardly from the said western line of the wharf; thence southwardly, parallel with the said western line of the wharf and three hundred feet eastwardly therefrom, to the southern boundary line of the city of St. Louis.

SEC. 2. So much of the grounds included within the boundaries of the northern portion of the wharf, as hereinbefore established, as are necessarily occupied by the water works of the city of St. Louis, shall remain in the occupancy of the said water works until the said works shall be removed to some other locality.

SEC. 3. The land commissioner is hereby authorized and instructed to cause the wharf, as hereinbefore established, to be opened according to law.

Approved August 6th, 1864.

I, H. J. Pocock, register of the city of Saint Louis, hereby certify the foregoing to be a true copy of the original, on file in this office, of an ordinance passed by the municipal assembly of the city of Saint Louis "entitled" An ordinance to establish and open the wharf from Biddle street to the northern boundary of the city and from Hazel street to the southern boundary of the city, and numbered 5403.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the city of Saint Louis this 14th day of March, 1896.

H. J. POCOCK, *Register.*

Mr. ALLEN: I desire to introduce and first call your honor's attention to a public act, which was a city charter of the city of St. Louis, of 1870, page 478, and particularly sections one, two, three, five, and six. *Then* I called your honor's attention I did not notice it *is* a public act. I am going to follow that with certain testimony.

320 WALTER B. DRYDEN, being duly sworn on behalf of the defendants, testified as follows:

Direct examination by CHARLES CLAFLIN ALLEN, Esq.:

Q. State your full name.
A. Walter B. Dryden.
Q. What position do you hold?
A. In the city counselor's office.
Q. How long have you held that office?
A. 1877.

Q. Since 1877?

A. Yes, sir.

Q. As such clerk to the city counselor, I will ask you whether or not you have the custody of papers which have been on file in that office.

A. Yes, sir.

Q. And have ever since 1877?

A. Yes, sir.

Q. You hold in your hand some pamphlets; state what they are.

A. Proceedings to open Kennett street—Kennett street from North Market—in 1870.

Q. Now, then, these have been in the possession of the city counselor how long?

A. Since the scheme and charter went into effect. Mr. Bell took possession of the office.

Q. Who put you in charge of these papers?

A. Mr. Bell told me to go up to the city counselor's office and take charge or to take charge of part of the land commissioner——

Mr. ALLEN: Now, if your honor please, I offer in evidence the petition in the proceeding to open Kennett street, entitled City of St. Louis, plaintiff, against a number of defendants, and calling attention to the fact that the name of Martha J. Sweringen appears as a defendant to one of the proceedings.

Mr. BELL: We will object to this paper. This paper seems to be signed by a gentleman by the name of Allison, land commissioner, dated the 5th of July, 1870.

The objection was overruled.

I wish to offer this in evidence in addition to charter of St. Louis of 1870, city ordinance 5393.

321 Mr. BELL: I object to this ordinance 5393.

Objection overruled.

Said ordinance was then read and is as follows:

An ordinance establishing the office of land commissioner and regulating the proceedings thereof.

Be it ordained by the common council of the city of St. Louis:

ARTICLE I.

SECTION 1. There shall be appointed in the same manner as other city officers a land commissioner, whose salary shall be fifteen hundred dollars per annum, and who shall hold his office for three years, and until his successor is duly appointed and qualified, unless sooner removed for good cause.

SECTION 2. He shall ascertain the nature of titles and localities and condition of all landed property owned or rightfully claimed by the city, either in her own right or in trust for others, and shall jointly with the city counselor prosecute and defend, in behalf of the city, all suits, and conduct other legal proceedings involving

the rights of the city in and to any landed property. He shall cause to be made out and preserve copies, duly authenticated, of all deeds, conveyances, title papers and contracts concerning the ownership of such property; also maps and plats of the same. He shall, on the first day of each stated session of the council, or at other times, if required, report to them the condition of the city's interest, hereby committed to his charge, and recommend, at any time, such action on the part of the council, as the public interest in his charge may, in his opinion, require. He shall also perform the duties imposed upon the land commissioner by an act of the General Assembly of the State of Missouri, entitled, "An act supplementary to the several acts incorporating the city of St. Louis, approved January 16th, 1860."

322 SEC. 3. He shall at all times furnish verbal information or written reports, as required by the comptroller, relating to any matters embraced in the duties of his office, to the comptroller.

ARTICLE II.

SECTION 1. Whenever the common council by ordinance, shall order the opening, widening or altering of any street, avenue, alley, wharf or public square, established by ordinance, and it is necessary to take private property for the same, the city engineer shall, under the direction and supervision of the land commissioner, survey and make a plat of the property to be taken, showing the metes and the names of the owners thereof, and also of all the property next adjoining the ground proposed to be taken, with the metes and names of the owners thereof; and the city engineer and assessor shall also furnish the land commissioner with such other plays as he shall require.

SEC. 2. Upon the completion of the plat showing the property necessary to be taken, as aforesaid, for the proposed improvement, the land commissioner shall, after giving six days' notice in the newspaper doing the city printing, forthwith proceed to cause the said property to be condemned, according to the provisions of an act of the General Assembly of the State of Missouri, entitled "An act supplementary to the several acts incorporating the city of St. Louis," approved January sixteenth, eighteen hundred and sixty, and in so doing, all notices, subpœnas, venire, attachments and all processes on behalf of the city, or other parties interested in the proceedings, shall be issued by the land commissioner and signed by him and attested by the city register, under the seal of the city, and shall be served and returned by the city marshall to the land commissioner, according to law.

SEC. 3. In all cases where the city marshall may make return that all the defendants named in the original notice issued in any

323 procedure about to be begun for the opening, widening or altering of any alley, street, avenue, wharf or public square, as aforesaid, are found and served with such notice, the land commissioner shall give further notice, by publication for ten days in two daily ne-spapers printed in the city of St. Louis, to all other parties interested, whether in damages or benefits, that such pro-

ceedings are about to be had, and that all such interested parties may appear and attend to their interests on the day and at the place appointed by the land commissioner.

SEC. 4. The jury shall be sworn by the land commissioner, faithfully and impartially to discharge the duties imposed upon them by the seventh section of the act of the General Assembly of the State of Missouri, entitled "An act supplementary to the several acts incorporating the city of St. Louis," approved January sixteenth, eighteen hundred and sixty.

SEC. 5. The jury shall be impanneled in the hall of the common council, where the evidence shall be heard on either side; and after hearing all the evidence, and examining the ground to be taken, owned by the parties to be charged with damages, or compensation to be assessed, they shall return their verdict to the land commissioner.

SEC. 6. Immediately after the council shall have confirmed the verdict of the jury, and made an appropriation of the sum, if any, awarded to be paid, by the city by the verdict of the jury, it shall be the duty of the land commissioner to render judgment in favor of the city of St. Louis, against the several parties, and against the property charged by the verdict of the jury, for the payment of the damages assessed; and the land commissioner shall also immediately make out a certified abstract or list of said judgments, showing the persons, property and amount, and the *pro rata* cost up to the rendering of the verdict of each judgment, and shall furnish the same to the city comptroller, who shall advertise said list for ten days
324 in one or more newspapers published in the city of St. Louis, notifying all persons against whom and against whose property assessments are made, that they may pay and satisfy the same before execution shall issue at the comptroller's office, and pay the same to the comptroller at any time within thirty days after said notice is inserted; and the comptroller shall receive from such parties as desire to pay the same, all assessments levied against them and against their property, and pay the same into the city treasury, and at the expiration of thirty days the comptroller shall return said list to the land commissioner with his marginal remarks thereon, showing what judgments have been paid and what remains unpaid; and the land commissioner shall then immediately issue executions on all judgments remaining unpaid, with *pro rata* costs for advertising and collecting the same added thereto, directed to the city marshal, whose duty it shall be to collect the same from the owner or owners of the property charged in the execution; and the land commissioner shall file the said abstract or list returned to him by the comptroller, in his office.

SEC. 7. Whenever judgment shall be rendered by the land commissioner for the condemnation of private property for public use, the comptroller is authorized to receive from the owner of property against which benefits and damages have been assessed the excess of the benefits over and above the damages, and judgment shall thereupon be cancelled. All executions for benefits shall be credited

with the amount of damages which may be awarded in favor of the party against whom the execution shall be issued.

SEC. 8. The execution to be issued in each case shall be a special *fieri facias*, and shall be in conformity with the judgment, and shall be returnable to the land commissioner within forty days; and it shall be the duty of the marshal, unless otherwise directed by the land commissioner, to advertise and sell the property charged
325 in the execution, in the manner prescribed for the sale of real estate under execution, by an act of the General Assembly of the State of Missouri, entitled "An act to regulate executions," approved December first, eighteen hundred and fifty-five.

SEC. 9. In every sale under execution, it shall be the duty of the marshal to make a deed to the purchaser, which deed shall be acknowledged before the mayor, and attested by the city register, under the seal of the city, and shall recite the execution, time and place of sale, the name of the purchaser, and the amount of the bid, which deed shall vest in the purchaser such title to the property named in the execution as can be conveyed under the proceedings had.

SEC. 10. The city marshall shall, unless the property described in the execution brings the amount of execution and costs, strike the same off to the city of St. Louis as purchaser thereof, and shall make a deed therefor to the city of St. Louis *to* the same manner as to any other purchaser.

SEC. 11. It shall be the duty of the land commissioner to keep a full and complete record of all proceedings had in the matter of condemning private property for public use, under the provision of this ordinance; and he shall, immediately after the passage of the ordinance confirming the verdict of the jury, file for record in the recorder's office of St. Louis county, the verdict of the jury in each case in the condemnation of private property, with the plat of the same thereto annexed, with the certificate of the clerk of the board of common council, attested by the city register, under the seal of the city thereto attached, and after the same is recorded, he shall file the same in the city register's office.

SEC. 12. The land commissioner shall keep a record of detailed abstracts of the property purchased by the city under executions, and shall also cause all deeds made by the city marshal of
326 St. Louis, as purchaser under this ordinance, to be recorded in said recorder's office, and, after the same are recorded, shall file the same in the city register's office.

SEC. 13. Each juror shall be entitled to receive a fee of one dollar and fifty cents per day for his services.

SEC. 14. The auditor and treasurer shall keep a separate account of all moneys collected and paid into the city treasury and appropriated by ordinance on account of the opening of any street, avenue, alley, wharf or public square. Such account to be styled "street-opening fund."

SEC. 15. Whenever the land commissioner shall furnish to the comptroller the abstract of judgment specified in section six of this

article, he shall take the comptroller's receipt for the gross amount thereof, including the cost charged, and file the same with the auditor, who shall charge the comptroller with such gross amount, and the auditor shall credit the comptroller with all receipts of the treasurer for money paid by him into the city treasury on account of the street-opening fund, and also credit him with the gross amount reported to the auditor by the land commissioner, marked unpaid by the comptroller on each abstract returned by the comptroller to the land commissioner. And it shall be the duty of the land commissioner, immediately on the return of each abstract to him by the comptroller to report to the auditor the gross amount marked unpaid thereon.

SEC. 16. The land commissioner shall also take a receipt from the city marshal for the gross amount of all executions, including costs charged, issued to him for collection, and file the same with the auditor, who shall charge the city marshal with such gross amount, and the auditor shall credit the city marshal with all receipts of the treasurer for moneys paid by him into the city treasury on
327 account of the street-opening fund, and also with the gross amount of executions under which sales and deeds have been made to the city of St. Louis as purchaser. And it is hereby made the duty of the land commissioner to report to the auditor the gross amount of such last-mentioned executions immediately upon the return of the same by the marshal to him.

SEC. *Sec.* 17. The land commissioner shall, in each case of condemnation of private property, after the final return of the city marshal, make report to the common council of the total amount of damages assessed and to be paid; of the amount assessed and to be paid as benefits, of the amount collected and paid into the city treasury; of the amount appropriated by the city; of the amount of the executions under which the city became purchaser, and the amount to be appropriated to provide for a deficiency, if any, in the street-opening fund, and for the liquidation of the damages.

SEC. 18. The land commissioner shall, immediately after the city marshal have returned to him all executions issued in any case of condemnation of private property, make out a certified abstract, following the order of the verdict, showing what assessments have been paid and satisfied, and the manner thereof, and file the same for record in the office of the recorder of deeds for St. Louis county, and at the filing thereof shall cause a note to be entered on the margin of the record of the verdict — which said abstract refers, referring to the record of said verdict.

SEC. 19. No damage shall be paid in any case until the final return of the city marshal to the land commissioner; and six per cent. annual interest shall be allowed on all amount of damages not paid within six months after the confirmation of the verdict of the jury in each case, such interest to commence at the expiration of said six months.

SEC. 20. All damages and costs incurred and expenditures
328 had under the provisions of this ordinance shall be charged to said street-opening fund, and no money shall be paid on

account thereof, except upon the warrant of the auditor, drawn on the treasurer, upon the requisition of the land commissioner; and every such requisition shall give all particulars as to the name of the claimant, and the nature and the amount of the claim; but, in case there is no money to the credit of the street-opening fund in the city treasury, the auditor may draw his warrant for the payment of jurors' fees, chargeable to the contingent fund.

SEC. 21. The land commissioner shall keep a record in detail of all requisitions made by him on the auditor under the provisions of this ordinance.

SEC. 22. Upon the payment of damages assessed for any property taken, thereupon the city engineer, shall forthwith proceed to take possession of the property for the city, and remove all buildings and improvements and obstructions therefrom, in conformity with existing ordinances, and any expenses incurred thereby shall be charged to the street-opening fund; and if any such buildings or improvements by the verdict of the jury belong to the city, they shall, provided the value thereof, in the opinion of the city engineer, exceeds one hundred dollars, be sold to the highest bidder for removal after ten days' advertisement in two newspapers printed in the city; and all moneys arising from the sale of such improvements shall be paid into the city treasury to the credit of the street-opening fund.

SEC. 23. The land commissioner, in all cases where he shall ascertain that streets, avenues, alleys, or wharves, have been dedicated to public use, and have not been opened, shall report the fact to the mayor; and it shall be the duty of the city engineer to proceed to open the same, and remove all obstructions therefrom, upon his receiving written directions signed by the mayor and land commissioner.

329 ARTICLE III.

SECTION 1. Whenever any street or alley in the city of St. Louis shall be declared a nuisance by the board of health, the clerk of said board shall immediately notify the land commissioner of such fact.

SEC. 2. The land commissioner shall thereupon immediately summons a jury of six disinterested citizens of this city, to inquire into the fact of the existence of the alleged nuisance. As soon as the said jury have been qualified, it shall proceed to the locality of said nuisance and view the same, and return a written verdict thereupon to the land commissioner, who shall transmit the same to the common council.

SEC. 3. Each juror shall be entitled to receive a fee of one dollar and fifty cents per day for his services.

SEC. 4. All expenses incurred in holding inquests herein authorized, shall be charged to appropriations for streets and alleys, and the auditor shall issue his warrant for the same upon the certificate of the land commissioner.

SEC. 5. The city marshal — serve all summons and other process of the land commissioner authorized under this article.

Approved August 2, 1864.

I, H. J. Pocock, register of the city of Saint Louis, hereby certify the foregoing to be a true copy of the original, on file in this office, of an ordinance passed by the municipal assembly of the city of Saint Louis entitled "An ordinance establishing the office of land commissioner and regulating the proceedings thereof," and numbered 5393.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of Saint Louis this 14th day of March, 1896.

H. J. POCOCK, *Register.*

330 Q. Then ordinance 5872, certified copy.

Mr. BELL: We object to ordinance 5872.

Mr. ALLEN: It is entitled An ordinance establishing a land commissioner, and the regular proceedings approved, July 6th, 1866.

Objection overruled.

Said ordinance was then read and is as follows:

(No. 5872.)

An ordinance establishing the office of land commissioner and regulating the proceedings thereof.

Be it ordained by the city council of the city of St. Louis:

SECTION 1. There shall be appointed, at the same time and in the same manner as other city officers, a land commissioner, whose salary shall be fifteen hundred dollars per annum, and who shall hold his office for two years, and until his successor is duly appointed and qualified, unless sooner removed for good cause.

SEC. 2. He shall ascertain the nature of titles and localities, and condition of all landed property owned or rightfully claimed by the city, either in her own right or in trust for others, and shall, jointly with the city counselor, prosecute and defend, in behalf of the city, all suits, and conduct other legal proceedings involving the rights of the city in and to any landed property. He shall cause to be made out and preserve copies, duly authenticated, of all deeds, conveyances, title papers and contracts concerning the ownership of such property, also maps and plats of the same. He shall, on the first day of each stated session of the council, or at any other times, if required, report to them the condition of the city's interest hereby committed to his charge and recommend at any time, such action on the part of the council, as the public interest in his charge may, in his opinion, require. He shall also perform the duties imposed upon the land commissioner by an act of the General Assembly of the State of Missouri, entitled "An act to revise the city char-
331 ter of the city of St. Louis," adopted March 19th, 1866.

SEC. 3. Upon the completion of the plat showing the property necessary to be taken, as aforesaid, for the proposed improvement, the land commissioner shall, after giving six days' notice in the newspapers doing city printing, forthwith proceed to cause the said property to be condemned, according to the provisions of an act of

the General Assembly of the State of Missouri, entitled "An act to revise the city charter of the city of St. Louis," approved March 19th, 1866, and in so doing all notices, subpœnas, venires, attachments, and all proceedings on behalf of the city or other parties interested in the proceedings, shall be issued by the land commissioner and signed by him and attested by the city register, under the seal of the city, and shall be served and returned by the city marshal to the land commissioner, according to law.

SEC. 4. The jury shall be sworn by the land commissioner, faithfully and impartially to discharge the duties imposed upon them by the fourth section of article eight of an act of the General Assembly of the State of Missouri, entitled "An act to revise the city charter of the city of St. Louis," approved March 19th, 1866.

SEC. 5. The jury shall be impanneled in the hall of the board of delegates, where evidence shall be heard on either side, and after hearing all the evidence, and examining the ground to be taken, owned by the parties to be charged with damages, or compensation to be assessed, they shall return their verdict to the land commissioner. All ordinances and parts of ordinance- inconsistent with this ordinance are hereby repealed.

Approved July 7, 1866.

I, H. J. Pocock, register of the city of Saint Louis, hereby certify the foregoing to be a true copy of the original on file in this office
of an ordinance passed by the municipal assembly of the city
332 of Saint Louis, entitled "An ordinance establishing the office of land commissioner and regulating the proceedings thereof," and numbered 5872.

In testimony whereof I have hereunto set my hand
[SEAL.] and affixed the seal of the city of Saint Louis this 14th day of March, 1896.

H. J. POCOCK, *Register.*

Then I offer ordinance 6919.

Mr. BELL: We object to ordinance 6919 on the same ground.

Objection overruled.

Said ordinance was then read and is as follows:

(6919.)

An ordinance amendatory of ordinance- number five thousand three hundred and ninety-three and five thousand eight hundred and seventy-two, establishing the office of land commissioner and regulating the proceedings thereof.

Be it ordained by the city council of the city of St. Louis:

SECTION 1. Section five of ordinance number five thousand three hundred and ninety-three and section five of ordinance number five thousand eight hundred and seventy-two are hereby repealed.

SECTION 2*d*. The jury shall be impannelled in the office of the land commissioner, where the evidence shall be heard on either side; and, after hearing all the evidence and examining the ground to be

taken, owned by the parties to be charged with damages of compensation to be assessed, they shall return their verdict to the land commissioner.

SECTION 3. The city register shall procure for the office of the land commissioner the necessary furniture.

Approved June 25th, 1869.

I, H. J. Pocock, register of the city of Saint Louis, hereby certify the foregoing to be a true copy of the original on file in this office of an ordinance passed by the municipal assembly of the city
333 of Saint Louis, entitled "An ordinance amendatory of ordinance- number five thousand three hundred and ninety-three and five thousand eight hundred and seventy-two," establishing the office of land commissioner, and numbered 6919.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the city of Saint Louis this 14th day of March, 1896.

H. J. POCOCK, *Register.*

Mr. BELL: We object to ordinance 7110 on the same ground.

Objection overruled.

Mr. ALLEN: An ordinance establishing and opening Kennett Str. from North Market street, approved January 26th, 1870.

Said ordinance was then read and is as follows:

(7110.)

An ordinance to establish and open Kennett street from North Market street to Ferry street.

Be it ordained by the city council of the city of St. Louis:

SECTION 1. Kennett street is hereby established as a public highway one hundred feet wide, from North Market street to Ferry street, as follows: From North Market street to Dock street the east line to coincide with the east line as laid off in North St. Louis from Dock street to Buchanan street, the west line a straight linear continuation southwardly of its course as laid off in Buchanan's addition, thence from Buchanan street to Salisbury street, the west line to coincide with the west line as at present established, thence northwestwardly to Ferry street in a straight line to connect with the west line of the first street in Buchanan's addition, east of Gingrass creek.

SEC. 2. The land commissioner is hereby authorized and instructed to cause said Kennett street to be opened according to law.

Approved January 26, 1870.

334 I, H. J. Pocock, register of the city of Saint Louis, hereby certify the foregoing to be a true copy of the original on file in this office of an ordinance passed by the municipal assembly of the city of Saint Louis, entitled "An ordinance to establish and open Kennett street from North Market street to Ferry street," and numbered 7110.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the city of Saint Louis this 14th day of March, 1876.

H. J. POCOCK, *Register.*

I offer in evidence ordinance 7450.

Mr. BELL: I object to ordinance 7450 on the same ground.

Objection overruled.

Said ordinance was then read and is as follows:

(7450.)

An ordinance confirming the verdict of the jury in the matter of the opening of Kennett street from North Market street to Ferry street.

Be it ordained by the city council of the city of St. Louis:

Be it ordained by the city council of the city of St. Louis:

SECTION 1. The verdict of the jury in the matter of the opening of Curran street from Carroll street to Park avenue as established by ordinance seven thousand one hundred and fifty-three, approved February fourth, eighteen hundred and seventy, reported to the city council November fourteenth eighteen hundred and seventy is hereby confirmed.

SEC. 2. The sum of two hundred and two dollars and five cents is hereby set apart out of the street-opening fund and appropriated to pay the amount assessed by said jury against the city of St. Louis in opening the said Curran street between the points named.

335 I, H. J. Pocock, register of the city of Saint Louis, hereby certify the foregoing to be a true copy of the original on file in this office of an ordinance passed by the municipal assembly of the city of Saint Louis entitled "An ordinance confirming the verdict of the jury in the matter of the opening of Kennett street from North Market street to Ferry street," and numbered 7450.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the city of Saint Louis this 14th day of March, 1896.

H. J. POCOCK, *Register.*

I again offer the petition and summons for the opening of Kennett street from North Market to Ferry street, entitled City of St. Louis *vs.* James McGuire and others, issued by R. B. Allison, land commissioner, July 5th, 1870.

Mr. BELL: I again object to the petition.

Objection overruled.

Petition and summons were then read and are as follows:

CITY OF ST. LOUIS, Plaintiff,
against
LACLEDE IRON MANUFACTURING CO., CHAS. LAND, LOUIS W. BUSCHMANN, James McGuire, Lafayette Parker, Tardy Manning, Sarah A. Ihling, Walter Lecy, Marshall Brotherton, Marshall Brotherton and John A. Ferguson, Solon Humphreys, Hugo Deibel, Geo. and H'y Brandon, Samuel I. P. Anderson, John Kraft, Fred Kraft, Clemens Maise, Wm. Brass, Geo. Fischer, Phil. Kraft *et al.*, Merchants' Bank of St. Louis, David Brancoiner, Erastus Wells, H. S. Parker, Hill, Lenon and Co., Lambert Walther, Catherine Koehler, Cath. Kingsland, Wm. G. & R. B. Clark and James B. Hill, Phil. Kingsland, James B. Hill, Leroy Kingsland, Margareth
336 Thomas, Barton Bates, M. Brotherton, John Withers, Daniel McAteer and Mich. Cassiday, John Maguire, Elvise P. Kayser, Parker and Anderson, Ch. R. Anderson, Hewey S. Parker and Ch. R. Anderson, E. Mallinckrodt, Gustave, Edward, and Otto Mollinckrodt, Robert Barth, John C. Schreiner, Nicholas Hack, Mary Thomas, Chas. H. Buck and Wiley S. Wright, N. A. Destrehan, E. C. Angeltodt, Nelson Cole, Samuel McCutchon, Louis Espenschild, Christ. F. Liebke and Chas. H. Schrage, Mary B. Scott, Julia Crosby, Sallie B. McPheeters, Liebke and Schrage, Lessees; Mary B. Scott, Liebke and Schrage, Lessees; Louis Espenschild, Christ. F. Liebke and Chas. H. Schrage, Liebke and Schrage, Lessees; Christ. F. Liebke and Chas. H. Schrage, Louis Espenschild *et al.*, Ben. M. Lewis, Sallie B. McPheeters, Mary L. Tyler, Louis Espenschild and Others; Liebke and Schrage, Lessee-; Mary L. Tyler, Andrew Keil, Lessee; Mary L. Tyler, Ferd. Walters, Lessee; Martha Sweringen, Mary Digges, Lessee; Martha Sweringen, Jacob Schreiser, Lessee; Martha Sweringen, Albert Urban, Lessee; Anna Austin, Rachel A. Welles, Fannie N. Manson, Martha J. Sweringen, Eliza A. Dean, Cornelia F. Tilford, Wm. H. Glasgow, Joseph Gartside, John S. McCune, Napolen Mullikin, Samuel Gaty, Wm. H. Lackland and Alex. Martin, Wm. C. Taylor, Elias Hasselwander, Edw. Heitzeberg, John S., Alfred, and W. Trigg, Robert Cook, Chas. Gage, John Gage, Martha A. Wills (Henry Overstolz, Fred. Schulenberg and Adolphus Boeckeler, Lucy V. Semple Ames, Lessee); Orleand Schaumberg, Lucy V. Semple Ames, Lessee; Isaac Walker's Est., Benjamin W. Hill, Louis Arbeth, I. Newhiusetr, Sylvia Newhouse, Tr.; Mullanphy Emigrant Relief Fund, City of St. Louis, North Missouri Railroad Co., Christopher Crone, Wm. S. Harvey, H. W. Henghaus, Est. Chauncey Staples, Wm. M. Pherson, M. A. Pendleton, Arthur Barrett, Martha S. Sweringen and Alexander W. Mitchell, Est. Thomas Austin, Defendants.

337 The above-named parties, defendants, and all others interested in the property proposed to be taken and in the improvements to be made are hereby notified that proceedings will be had by the land commissioner of the city of St. Louis, in accordance with the provisions of "An act to revise the charter of the city of St. Louis," approved March 4th, 1870, and revised city ordinance No.

5393, approved August 2nd, 1864, styled "An ordinance establishing the office of land commissioner and regulating the proceedings thereof," and city ordinance No. 5872 and city ordinance No. 6919, at the office of the land commissioner, in the city of Saint Louis, on the eight day of September, A. D. 1870, commencing at ten o'clock a. m. of that day and continuing at the same place and at such times as then and thereafter may be appointed for the purpose of causing private property to be condemned for public use in order to open Kennett street from North Market street to Ferry street under city ordinance No. 7110, as said property is designated and described in the official survey and plat of said Kennett street made by the city engineer, dated the 1st day of June, 1870, when a jury will be empanneled and the actual value of the land proposed to be taken will be ascertained and the damages and benefits assessed against and for the city and also against and for all persons whose property is benefitted or taken by said Kennett street being opened as aforesaid.

Given under my hand, at the city of St. Louis, this *this* [SEAL.] 5th day of July, A. D. 1870.

R. B. ALLISON,
Land Commissioner.

Attest: FRE-. W. FUCHS,
City Register.

I offer the return of the city marshal, Francis Romier, by J. E. Gerichter, D. C. M., and A. Dreifus, on the back of the petition and summons.

Mr. BELL: We object to the report of the marshal on the same grounds.

Objection overruled.

Said return of said marshal was then read and is as follows:

338 Executed the within writ in the city of St. Louis this 13th day of July, 1870, by having personal service on the following-named defendants, viz., Chas. Gage, John Gage, John J., Alfred, & Wm. Triggs, John C. Shreimer, Mary Diggs, A. Keil, Ferdinand Walters, Liebke & Schrage, Nicholas Hash, Jacob Schreimer, Gustave, Otto, and Edward Mallinckroth, Hill, Lemon & Co., Wm. G. R. B. Clark, James B. Hill, Fred. Kraft, John Kraft, Hugo Deibel, Clemens Meise, Lafayette Parker, Taray Manning, Philip Kraft, Marshall Brotherton, J. S. Ferguson; also by leaving a true copy of the same at the usual place of abode of the within-named defendants with a member of their respective families over the age of fifteen years: Urban Obest, Laclede Iron Works, with E. A. Richerson, sup't; Wm. Brass, Lambert Walters, Louis Espenschild.

FRANCIS ROMER,
City Marshal.
J. C. GERICHTEN, *D. C. M.*
A. DRCIFUS, *Deputy.*

Also on this 14th July by having personal service on the following defendants: Napolen Mulliken, Wm. B. Lewis, Barton Bates, Chas. L. and W. Buchanan, Buck and Wright, George and Harvey

Brandon; also by leaving true copy of the same at the usual place of abode of the within-named defendants with a member of their respective famil-es over the age of fi-teen years: Catherine Kingsland, Joseph Weil, Philip Kingsland, S. J. P. Anderson; also by leaving a true copy of the same at the office of the North Missouri Railroad Co. with Barton Bates, pres't of the North Missouri Railroad Company, and W. L. C. Brey, secretary of the Mullanphy Im-igrant Relief Fund, at the office of Mullanphy Im-igrant Relief Fund, no other chief officer of the said Mullanphy Im-igrant Relief Fund being found in the city of St. Louis.

FRANCIS ROMER,
City Marshal.
J. C. GERICHETER.

339 Also by having had personal service this 15th day of July, 1870, on the following-named defendants: D. Braneviner, Nelson Cole, Robert Barth, Wm. H. Lackland, Alexander Martin, City of St. Louis, with the executive officer of the city of St. Louis, Mayor Nathan Cole; John S. McCune, Wm. McPherson, Samuel Gaty, Leroy Kingsland, Ed. Haitzbury, Daniel McAlthier, and Mich. Cassiday; also by leaving a true copy of the same at the office of the Merchants' Bank of St. Louis, with S. C. Yeatman, cashier of said bank, no other chief officer of said bank being found in the city of St. Louis; also by having personal service on the 16th day of July, 1870, — Henry S. Parker and Chas. R. Anderson, Schulenburg and Boeckler, Joseph Gqrtside (drfs.).

Also by *a* leaving a true copy of the same, this 18th day of July, 1870, at the usual place of abode of the within-named defendants, Henry Coerstalz, Martha Sweringen, with a member of their family over the age of fifteen years.

Also by having personal service this 18th day of July, 1870, on the following-named defendants: Erastus Wells, John McGuire, Arthur Barrett. After due and diligent search the following-named defendants were not found: E. C. Angelroth, Chansey Staples, C. F. Tilford, Wm. H. Glasgow, Lucy V. Semple Ames, Geo. Fischer, Mary B. Scott, Martha Wills, M. A. Pendleton, Robert Cook, Thos. Austin, Fanny N. Munson, Christopher Crone, Mary Thomas, Louisa Arlot, Anna Austin, Sarah A. Ihling, Julia Crosby, N. A. Destrahan, Sallie B. McPheeters, Walter Lacy, S. Newhouse, Orleana Schamburg, Mary L. Tyler, S. McCutchen, Benj. W. Hill, H. W. Venghouse, Sylvia Newhouse, Elias Hasselwender, Eliza A. Dean, Rachel A. Wells, Alvise P. Kieser, John Withers, Margaret Thomas, Catherine Koehler, Solon Humphries, Isaac Walker's Est., Wm. C. Taylor, Jas. McGuire.

340 FRANCIS ROMER,
City Marshal,
By J. C. GERICHTER, *D. C. M.,*
By A. DREIFUS, *Deputy.*

Mr. ALLEN: I also offer in evidence certain other papers to certain other defendants. I offer the record — the verdict of the jury in the

matter of opening Kennett street from North Market and the proceedings before the land commissioner.

Mr. BELL: We object to these.

Mr. ALLEN: We offer in evidence the findings here concerning the damages to different persons, calling especial attention to those persons whose property is shown upon the plat conveying this property as being east of 1st street, city block 308, and in front of the property alleged claimed by the plaintiff. We also offer in evidence the assessment of benefits. We offer the whole proceedings, plat and all.

COURT: All objections are overruled.

We offer this paper to show the assessment of ben-fits, including the assessment of benefits to Martha J. Sweringen for property in city block 308 E.

Mr. BELL: We object to that as immaterial, the same as the other.

COURT: Objection overruled.

(For which see verdict hereinafter inserted at page 377 of this transcript).

Mr. ALLEN: I call attention to the fact that at the end of the assessment and benefits on the paper it appears as follows:

Said proceedings and plats were then read and exhibited in evidence and are as follows:

CITY OF ST. LOUIS, Plaintiff,

against

LACLEDE IRON MANUFACTURING CO., CHAS. LAND, LOUIS W.
341 Buschmann, James McGuire, Lafayette Parker, Tardy Manning, Sarah A. Ihling, Walter Lecy, Marshal Brotherton, Marshall Brotherton and John S. Ferguson, Solon Humphreys, Hugo Deibel, Geo. and H'y Brandon, Samuel I. P. Anderson, John Kraft, Fred. Kraft, Clemens Maise, Wm. Brass, Geo. Fischer, Phil. Kraft *et al.*, Merchants' Bank of St. Louis, David Branconier, Erastus Wells, H. S. Parker, Hill, Lemon & Co., Lambert Walthers, Catherine Koehler, Cath. Kingsland, Wm. H. & R. B. Clark and James B. Hill, Phil. Kingsland, James B. Hill, Leroy Kingsland, Margareth Thomas, Barton Bates, M. Brotherton, John Withers, Daniel McAteer and Mich. Cassiday, John Maguires, Eloise P. Kayser, Parker and Anderson, Ch. R. Anderson, Henry S. Parker and Ch. R. Anderson, E. Mullinckrodt, Gustave, Edward, and Otto Mollinckrodt, Robert Barth, John C. Schreimer, Nicholas Hack, Mary Thomas, Chas. H. Buch and Wiley S. Wright, W. A. Destrehan, E. C. Angelrodt, Nelson Cole, Samuel McCutchon, Louis Espenschild, Christ. F. Liebke and Chas. H. Schrage, Mary B. Scott, Julia Crosby, Sallie B. McPheeters, Liebke & Schrage, Lessees; Mary B. Scott, Liebke & Schrage, Lessees; Louis Espenschild, Christ. F. Liebke and Chas. H. Schrage, Liebke & Schrade, Lessees; Christ. F. Liebke and Chas. H. Schrage, Louis Espenschild *et al.*, Ben. M. Lewis, Sallie B. McPheters, Mary L. Tyler, Louis Espenschild and Others; Liebke and Schrage, Lessees; Mary L. Tyler, Andrew Keil, Lessee; Mary L. Tyler, Ferd. Walters, Lessee; Martha Sweringen, Mary Digges, Lessee; Martha Sweringen, Jacob Schreiner, Lessee; Martha Sweringen, Obert Urban,

Lessee; Anna Austin, Rachel A. Welles, Fannie N. Manson, Martha J. Sweringen, Eliza A. Den, Comenlia F. Talford, Wm. H. Glasgow, Joseph Gartside, John S. McCune, Napolen Milliken, Samuel Gaty, Wm. H. Lackland and Alex. Martin, Wm. C. Taylorm, Elias Hassenwander, Edw. Heiteberg, John S. Alfred and W. Trigg, Robert Cook, Chas. Gage, John Gage, Martha A. Wills (Henry Overstolz, Fred Schulenberg and Adolphus Boeckler, Lucy V. Semple Ames, Lessee); Orlean Schamberg, Lucy V. Semple Ames, Lessee; Isaac Walker's Est., Benjamin W.
342 Hill, Louis Arleth, I. Newhouse, Tr.; Sylvia Newhouse, Tr.; Mullanphy Emigrant Relief Fund, City of St. Louis, North Missouri Railroad Co., Christopher Crone, Wm. S. Harvey, H. W. Venghaus Est., Chancey Staples, Wm. M. McPherson, M. A. Pendleton, Arthur Barrett, Martha S. Sweringen and Alexander W. Mitchell, Est. Thomas Austin, Defendants.

The above-named parties, defendants, and all others interested in the property proposed to be taken and in the improvements to be made, are hereby notified that proceedings will be had by the land commissioner of the city of St. Louis, in accordance with the provisions of "An act to revise the charter of the city of St. Louis," approved March 4th, 1870, and revised city ordinance No. 5393, approved August 2nd, 1864, styled "An ordinance establishing the office of land commissioner and regulating the proceedings thereof," and city ordinance No. 5872, and city ordinance No. 6919, at the office of the land commissioner, in the city of St. Louis, *and* the eight day of September, A. D. 1870, commencing at ten o'clock a. m. of that day, and continuing at the same place and at such times as then and thereafter may be appointed, for the purpose of causing private property to be condemned for public use in order to open Kennett street from North Market street to Ferry street, under city ordinance No. 7110, as said property is designated and described in the official survey and plat of said Kennett street made by the civil engineer and dated the 1st day of June, 1870, when a jury will be empanneled and the actual value of the land proposed to be taken will be ascertained and the damages and benefits assessed against and for the city, and also against and for all persons whose property is benefitted or taken *taken* by said Kennett street being opened, as aforesaid.

[SEAL.] Given under my hand, at the city of St. Louis, this 5th day of July, A. D. 1870.
343

R. B. ALLISON,
Land Commissioner.

Attest: FRED W. FUCHS,
City Register.

Executed the within writ in the city of St. Louis this 13th day of July, 1870, by having personal service on the following-named defendants, viz: Chas. Gage, John Gage, John J., Alfred, and Wm. Triggs, John C. Schreiner, Mary Diggs, A. Keil, Ferdinand Walters, Liebke and Schrage, Nicholas Hash, Jacob Schreiner, Gustave Otto,

and Edward Mallinckroth, Hill, Lemon & Co., Wm. G. R. B. Clark, James B. Hill, Fred Kraft, John Kraft, Hugo Deibel, Clemence Meise, Lafayette Parker, Fardy Manning, Philip Kraft, Marshal Brotherton, J. S. Ferguson; also by leaving a true copy of the same, at the usual place of abode of the within-named defendants, with a member of their respective families over the age of fifteen years:

Urban Orbest, Laclede Iron Works, with E. A. Richardson, sup't; Wm. Brass, Lambert Walters, Louis Espenschild.

FRANCIS ROMER, *City Marshal*,
J. C. GERICHTEN, *D. C. M., and*
A. DREIFUS, *Deputy*.

Also, on this 14th day of July, by having personal service on the following defendants: Napoleon Milliken, Wm. B. Lewis, Barton Bates, Chas. Land, W. Buchanan, Buck & Wright, George and Henry Brandon; also by leaving true copy of the same, at the usual place of abode *by* the within-named defendants, with a member of their respective families over the age of fifteen years: Catherine Kingsland, Joseph Weil, Philip Kingsland, S. J. P. Anderson.

Also by leaving a true copy of the same at the office of the North Missouri Railroad Co., with Barton Bates, pres't of the North Missouri Railroad Company, and W. L. C. Brey, secretary of the Mullanphy Im-igrant Relief Fund, at the office of Mullanphy Im-igrant Relief Fund, no other chief officer of the said Mullanphy
344 Im-igrant Relief Fund being found in the city of St. Louis.

FRANCIS ROMER,
City Marshal.
J. C. GERICHTEN.

Also by having had personal service this 15th day of July, 1870, on the following-named defendants: F. D. Brancoiner, Nelson Cole, Robert Barth, Wm. H. Lackland, Alexander Martin, City of St. Louis, with the executive officer of the city of St. Louis, Mayor Nathan Cole; John S. McCune, Wm. McPherson, Samuel Gaty, Leroy Kingsland, Ed. Heitzberg, Daniel McAlthier, and Mich. Cassiday.

Also by leaving a true copy of the same at the office of the Merchants' Bank of St. Louis with S. C. Yeatman, cashier of said bank, no other chief officer of said bank being found in the city of St. Louis.

Also by having personal service on the 16th day of July, 1870, — Henry S. Parker and Chas. R. Anderson, Schelenberg and Boeckler, Joseph Gertside (Drfs.).

Also by leaving a true copy of the same this 18th day of July, 1870, at the usual place of abode of the within-named defendants, Henry Overstolz, Martha Sweringen, with a member of their families over the age of fifteen years.

Also by having personal services this 18th day of July, 1870, on the following-named defendants: Erastus Wells, John McGuire, Arthur Barrett. After due and dil*l*igent search the following-named defendants were not found: E. C. Angelrodt, Chancy Staples, C. F.

Tilford, Wm. H. Glasgow, Lucy V. Semple Ames, Geo. Fisher, Mary B. Scott, Martha A. Wills, M. A. Pendleton, Robert Cook, Thos. Austin, Fannie M. Manson, Christopher Crone, Mary Thomas, Louisa Arlot, Anna Austin, Sarah A. Ihling, Julia Crosby, N. A. Destrehan, Sallie B. Pheeters, Walter Lacy, S. Newhouse, Orleana Schaumberg, Mary L. Tyler, S. McCutchon, Benj. W. Hill, H. W. Venhouse, Silvia Newhouse, Elias Hasselwender, Eliza A. Dean, Rachel A. Wells, Eloise P. Keiser, John Withers, Margaret
345 Thomas, Catherine Koehler, Solon Humphries, Isaac Walkers, Est. Wm. C. Taylor, Jas. McGuire.

FRANCIS ROMER,
City Marshal,
By J. C. GERICHTEN, *D. C. M.*
A. DREIFUS, *Deputy.*

OFFICE OF THE LAND COMMISSIONER,
ST. LOUIS, *Jan.* 28, 1870.

To all *to* whom it may concern:

Notice is hereby given that the undersigned will forthwith proceed to cause Kennett street to be opened *to* from North Market street to Ferry street, as said Kennett street is established by city ordinance No. 7110, *on* accordance with the provisions of existing laws and ordinances.

R. B. ALLISON,
Land Commissioner.

STATE OF MISSOURI, }
County of St. Louis. }

Personally appeared before the undersigned, a notary public within and for the said county of St. Louis, Henry G. Paschall, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "Missouri Republican," a newspaper printed and published in the city and county of St. Louis, State of Missouri, of which he is printer, for six times, the first insertion being on the twenty-ninth day of January, 1870, and the last insertion on the third day of February, 1870, as follows:

No. 29, Jan. 29, 1870.
30, 30,
31, 31,
32, Feb. 1,
33, 2,
34, 3,

HENRY G. PASCHALL.

346 Sworn to and subscribed before me this fourth day of February, 1870.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at office, in St. Louis, the day and year
[SEAL.] last above written.

D. G. JONES,
Notary Public, St. Louis County, Mo.

Printer's fee..... .66
Affidavit ..... .50

$1.16

Bureau des Land-Commissärs,
St. Louis, 28. Januar 1870.

An Alle, die es betrifft.

Es wird hiermit bekannt gemacht, daß der Unterzeichnete sofort Schritte thun wird, die Kennett Straße von der North Market Straße nach der Ferry Straße eröffnen zu lassen, wie genannte Kennett Straße ausgelegt wurde nach Vorschrift der Stadtverordnung Nr. 7110, gemäß den Bestimmungen der bestehenden Gesetze und Verordnungen.

R. B. Allison,
Landcommissär.

29. n. v. tg.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Personally appeared before the undersigned (a notary public within and for the county of St. Louis) Carl Daeuzer, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "St. Louis Neuer Auzeizer des Westen's," printed and published within the said county and State (the newspaper of which he is the printer), for six times, the first insertion being on the twenty-ninth day of January, 1870, and the last insertion on the third day of February, 1870, as follows:

347

Jan. 29, 1870.
30, 1870.
31, 1870.
Feb. 1, 1870.
2, 1870.
3, 1870.

C. DAEUZER.

Sworn to and subscribed before me this second day of March, 1870.

CHARLES F. BLATTAN,
Notary Public.

[SEAL.]

Printer's fee..... $2.25
Affidavit ..... .50

$2.75

OFFICE OF THE LAND COMMISSIONER,
ST. LOUIS, *June 29th*, 1870.

To all *to* whom it may concern:

Notice is hereby given that the undersigned will forthwith proceed to cause Kennett street to be opened from North Market to Ferry street, as said Kennett street is established by city ordinance

No. 7110, in accordance with the provisions of existing laws and ordinances.

R. B. ALLISON,
Land Commissioner.

348 STATE OF MISSOURI, } ss:
County of St. Louis, }

Personally appeared before the undersigned (a notary public within and for the county of St. Louis) Henry G. Paschall, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "Missouri Republican" (printed within the said county and State, the newspaper of which he is one of the publishers) for six times, the first insertion being on the thirteenth day of June and the last insertion on the sixth day of July, 1870, as follows:

1st time, June 30.
2nd time, July 1.
3rd time, " 2.
4th time, " 3.
5th time, " 4.
6th time, " 6.

HENRY G. PASCHALL.

Sworn to and subscribed before me this thirteenth day of July, 1870.

[SEAL.]

E. G. JONES,
Notary Public, St. Louis Co.

Printer's fee	.66
Affidavit	.50
	$1.16

Bureau des Land-Commissärs, }
St. Louis, 29. Juni 1870. }

An Alle, die es betrifft.

Es wird hiermit bekannt gemacht, daß der Unterzeichnete sofort Schritte thun wird, die Kennett Straße von der North Market Straße nach der Ferry Straße eröffnen zu lassen, wie besagte Kennett Straße ausgelegt wurde nach Vorschrift der Stadtverordnung Nr. 7110, gemäß den Bestimmungen der bestehenden Gesetze und Verordnungen.

R. B. Allison,
Landcommissär.

30. j. n. u.

549 STATE OF MISSOURI, } ss:
County of St. Louis, }

Personally appeared before me, the undersigned, a notary public within and for the county aforesaid, Theodor Plate, one of the publishers of the Westliche Post, of the State and county aforesaid, who, being duly sworn, deposeth and saith that the annexed advertisement notice, opening Kennett street from North street to Ferry street, was

published in the Westliche Post the time below specified, on the following days and in the following numbers, viz:

June 30, 1870, No. 152.
July 1, 1870, No. 153.
July 2, 1870, No. 154.
July 3, 1870, No. 27.
July 4, 1870, No. 155.
July 6, 1870, No. 156.

THEODOR PLATE.

Sworn to and subscribed before the undersigned this eight day of September, 1870.

[SEAL.]

OSCAR HOEFER,
Notary Public.

Printer's fee	$3.15
Affidavit	.50
Received payment.	$3.65

Notiz an alle Personen,

beeinträchtigt oder begünstigt durch die Eröffnung der Kennett Straße, von der North Market Straße bis zur Ferry Straße, gemäß Stadtverordnung Nr. 7110.

Stadt St. Louis, Klägerin gegen

die

350 The Laclede Iron Manufacturing Company, Chas. Land, Louis W. Buschman, James McGuire, Lafayette Parker, Tardy Manning, Sarah A. Ihling, Marshall Brotherton, Marshall Brotherton and John S. Ferguson, Solon Humphreys, Hugo Deibel, Geo. and Henry Brandon, Samuel J. P. Anderson, John Kraft, Fred. Kraft, Clemens Matse, Wm. Brass, Geo. Fisher, Phil. Kraft *et al.*, Merchants' Bank of St. Louis, David Brancoiner, Erastus Wells, H. C. Parker, Hill, Lemon & Co., Lambert Walther, Catherine Kingsland, Wm. C. & R. B. Clark, and James B. Hill, Phil Kingsland, James B. Hill, Leroy Kingsland, Margareth Thomas, Barton Bates, John Withers, Daniel McAteer, and Michael Cassiday, John Maguire, Elvise B. Kaiser, Parker & Anderson, Charles R. Anderson, C. Mallinckrodt, Gustav, Edward, Otto Mallinckrodt, Robert Barth, John C. Schreiner, Nicholas Hack, Mary Thomas, Charles H. Buck & Wiley S. Wright, R. A. Destrehan, C. E. Anglerodt, Nelson Cole, Samuel McCutchon, Louis Espenschild, Chris. F. Liebke & Charles H. Schrage, Mary V. Scott, Julia Crosby, Sallie B. McPheeters, Liebke & Schrage, miether-; Mary B. Scott, Liebke & Schrage, miether-; L. Especschield, Christian F. Liebke, & Charles H. Schrage, Liebke & Schrage, miether-; Louis Espenchild *et al.*, Benjamin M. Lewis, Mary L. Tyler, Mary L. Tyler, Andrew Kiel, miether; Mary L. Tyler, Frederick Walters, miether; Martha Sweringen, Mary Diggs, miether; Martha Sweringen, Albert Urban, miethers; Anna Austin, Rachel A. Wells, Tawny Manson, Martha J. Sweringen, Eliza A. Dean, Cornelia F. Tilford, Wnf. H. Glasgow, Joseph Gartside, John S. McCune, Napoleon Milliken, Samuel Gathy, Wm. H. Lackland, and Alexander Martin, Wm. C. Taylor, Elias Hasselwander, Edward Heilgeberg, John C. Alford, and Wm. Trigg, Robert Cook, Charles Gage, John

Gage, Martha A. Wills (Henry Overstol, Fred Schulenberg, and Adolphus Boeckler, Luch V. Semple Ames, miether-), Orleana Schaumberg, Lucy V. Semple Ames, miether; Isaac Walker'-besitythum, Benjamin W. Hill, Louisa Arieth, J. Newhouse, tr. Sylvia Newhouse, *tr.*; Mulanphy Emigrant Relief Fund; Stadt St. Louis, Nord Missouri Eisenhahu Co., Christopher Crone, Wm. S. Harvey, H. W. Vaughi's beistythum, Channey Staples, Wm. H. McPherson, M. A. Pendleton, Arthur Barrett, Martha J. Sweringen, and Alexander W. Mitchell's beistthum, Thomas Austin, Verklagte. Vor dem Land-Commissär der Stadt St. Louis. Da C. E. Angelrodt, Chauncey Staples, E. F. Tilford, Wm. H. Glasgow, Lucy V. Semple Ames, George Fisher, Mary B. Scott, Martha A. Willis, M. A. Pendleton, Robert Cook, Thos. Austin, Fannie M. Manson, Christopher Crone, Mary Thomas, Louise Arleth, Anna Austin, Sarah A. Ihling, Julia Crosby, R. A. Destrahan, Sallie B. McPheeters, J. Newhouse, tr.; Orleans Schaumberg, Mary L. Tyler, S. McCutcheon, Benj. W. Hill, Sylvia Newhouse, tr.; H. W. Vaughan's besitthune, Elias Hasselwender, Eliza A. Dean, Rachel A. Wells, Elvise P. Kaiser, John Withers, Margaret Thomas, Catherine Kohler, Solon Humphreys, Issac Walker's besitune, Wm. C. Taylor, Jas. McGuire,

352 von den hier oben mit Namen genannten Beklagten vom Stadtmarschall als unbekannt nicht zu finden oder von der Stadt abwesend berichtet wurden, so wird hiermit laut Gesetz durch Publikation Notiz gegeben an obengenannte Parteien, Beklagten und alle an dem mit Beschlag zu belegenden Eigenthum und vorzunehmenden Verbesserungen Interessierten, daß Schritte gethan werden durch den Landcommissär der Stadt St. Louis, in Uebereinstimmung mit den Verordnungen einer Akte zur Revision des Charters der Stadt St. Louis, bestätigt am 4. März 1870, und der revidirten Stadt-Ordinanz Nummer 5393, bestätigt am 2. August 1864, betitelt: „Eine Ordinanz zur Etablirung des Landcommissär-Amtes und zur Regulirung der Geschäfte desselben" und Stadt-Ordinanz Nr. 5872, in der Office des Landcommissärs in der Stadt St. Louis, am 8ten Tage des September A. D. 1870, beginnend um 10 Uhr Vormittags am genannten Tage und wird am selben Platze und zu solcher Zeit, wie bestimmt werden mag, fortgesetzt zum Zwecke der Beschlagnahme von Privateigenthum für öffentliche Zwecke zur Eröffnung der Kennett Straße, von der North Market Straße bis zur Ferry Straße, wie besagtes Eigenthum in der amtlichen Vermessung und dem Plane zur Eröffnung der besagten Kennett Straße am 1. Juni 1870 vom Stadt-Ingenieur verzeichnet wurde, wo der Werth des zu nehmenden Eigenthums durch Geschworene bestimmt wird und Beeinträchtigungen oder Begünstigungen für und gegen die Stadt eingetragen werden und ebenso gegen und für alle Personen, deren Eigenthum begünstigt oder mit Beschlag belegt wird zur Eröffnung besagter Kennett Straße.

Siegel.

Gegeben unter meiner Hand in der Stadt St. Louis am 9. August 1870.

R. B. Allison,
Landcommissär.

Attest:
Fred. W. Fuchs, Stadtregisstrator.

353 Notice to all persons inter-sted, whether benefitted or damaged by the opening of Kennett street from North Market to Ferry street under city ordinance No. 7110, City of St. Louis, plaintiff, against Laclede Iron Manufacturing Company, Chas. L. and Louis W. Buchanan, James McGuire, Lafayette Parker, Tardy Manning, Sarah A. Ihling, Marshall Brotherton, Marshall Brotherton and John S. Ferguson, Solon Humphreys, Hugo Deibel, George and Henry Brandon, Samuel J. P. Anderson, John Kraft, Fred Kraft, Clemens Maise, Wm. Brass, Geo. Fisher, Phil Kraft *et al.*, Merchants' Bank of St. Louis, David Brancoiner, Erastus Wells, H. S. Parker, Hill, Lemon & Co., Lambert Walther, Catherine Koehler, Catherine Kingsland, Wm. G. & R. B. Clark, and James B. Hill, Phil Kingsland, James B. Hill, Leroy Kingsland, Margareth Thomas, Barton Bates, John Withers, Daniel McAteer, and Michael Cassiday, John Maguire, Eloise P. Kaiser, Parker and Anderson, Charles R. Anderson, E. Mallinckrodt, Gustav, Edward, and Otto Mallinckrodt, Robert Barth, John C. Schreiner, Nicholas Hach, Mary Thomas, Charles H. Buck, & Wiley S. Wright, N. A. Destrehan, E. C. Angelrodt, Nelson Cole, Samuel McCutchon, Louis Espenschild, Christ. F. Liebke, & Charles H. Schrage, Mary B. Scott, Julia Crosby, Sallie B. McPheeters, Liebke & Schrage, lessee-; Mary B. Scott, Liebke & Schrage, lessee-; Liebke & Schrage, lessee-; Louis Espenschild *et al.*, Benjamin M. Louis, Mary L. Tyler, Andrew Kiel, lessee; Mary L. Tyler, Frederick Walters, lessee; Martha Sweringen, Mary Diggs, lessee; Martha Sweringen, Albert Urban, lessee; Anna Austin, Rachel A. Wells, Fannie N. Manson, Martha J. Sweringen, Eliza A. Dean, Co-melia F. Tilford, Wm. H. Glasgow, Joseph Gartside, John S. McCune, Napoleon Milliken, Samuel Gaty, Wm. H. Lackland, and Alexander Martin, Wm. C. Taylor, Elias Hasselwander, Edw. Heilgeberg, John S. Alford, and Wm. Trigg, Robert Cook, Charles Gage, John Gage, Mar-ha A. Wells, (Henry Overstolz, Fred Schulenberg, and Adolphus Boeckler, Lucy V. Semple Ames, lessees), Orleana Schaumburg, Lucy V. Semple Ames, lessee; Isaac Walker's est., Benjamin W.
354 Hill, Louis Orleth, J. Newhouse, tr. Sylvia Newhouse; Mullanphy Emigrant Relief Fund, City of St. Louis, North Missouri Railroad Co., Cristopher Crone, Wm. S. Harvey, H. W. Vaughan's est., Chauncey Staples, Wm. M. McPherson, M. A. Pendelton, Arthur Barrett, Martha J. Sweringen, and Alexander W. Mitchell'- est., Thomas Austin, defendants.

Before the land commissioner of the city of St. Louis.

Whereas E. C. Angelrodt, Chauncey Staples, C. Tilford, Wm. H. Glasgow, Lucy V. Semple Ames, Geo. Fisher, Mary B. Scott, Martha A. Wills, M. A. Pendleton, Robert Cook, Thos. Austin, Fannie M. Manson, Christopher Crone, Mary Thomas, Louise Arleth, Anna Austin, Sarah A. Ihling, Julia Crosby, N. A. Destrahan, Sallie B. McPheeters, J. Newhouse, tr.; Orleana Schaumberg, Mary L. Tyler, S. McCutcheon, Benjamin W. Hill, Sylvia Newhouse, H. W. Vaughan's est., Elias Hasselwander, Eliza A. Dean, Rachel A. Wells, Elvoise

P. Kaiser, John Withers, Margaret Thomas, Catherine Koehler, Solon Humphreys, Isaac Walker's est., Wm. C. Taylor, Jas. McGuire, of the above-named defendants, are returned by the city marshal as unknown, cannot be found, or absent from the city: Now, therefore, notice by publication, according to law, is hereby given to the above-named parties defendants and all others interested in the property proposed to be taken and in the improvements to be made that proceedings will be had by the land commissioner of the city of St. Louis, in accordance to the provisions of an act to revise the charter of the city of St. Louis and extend the limits thereof, approved March 4th, 1870, and revised city ordinance No. 5393, approved August 2nd, 1864, styled "An ordinance establishing the office of land commissioner and regulating the proceedings thereof," and city ordinance No. 5872 and city ordinance No. 6919, at the office of the land commissioner, in the city of St. Louis, on the -gi-th day of September, A. D. 1870, commencing at ten o'clock a. m. of that day and continuing at the same place and at such times as then and
355 thereafter may be appointed, for the purpose of causing private property to be condemned for public use in order to open Kennett street from North Market street to Ferry street, as said property is designated on the official survey and plat of said Kennett street and by the city engineer, dated the 1st day of June, 1870, when a jury will be empanneled and the actual value of the land proposed to be taken will be ascertained and damages and benefits assessed against and for the city and also against and for all persons whose property is benefitted or taken by said Kennett street being opened, as aforesaid.

Given under my hand, at the city of St. Louis, this 9th
[SEAL.] day of August, A. D. 1870.

R. B. ALLISON,
Land Commissioner.

Attest: FRED. W. FUCHS,
City Register.

STATE OF MISSOURI, }
County of St. Louis, } *ss:*

Personally appeared before the undersigned (a notary public within and for the county of St. Louis) Henry G. Paschall, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "Missouri Republican" (printed within the said county and State, the newspaper of which he is one of the publishers) for thirty times, the first insertion being on the 10th day of August and the last insertion on the 8th day of September, 1870.

1st time, August 10th.
2nd time, " 11th.
3rd time, " 12th.
4th time, " 13.
5th time, " 14.
6th time, " 15.
7th time, " 16.

8th time, August 17.
356 9th time, August 18th.
10th time, " 19.
11th time, August 20.
12th time, " 21.
13th time, " 22.
14th time, " 23.
15th time, " 24.
16th time, " 25.
17th time, " 26.
18th time, " 27.
19th time, " 28.
20th time, " 29.
21st time, " 30.
22nd time, " 31.
23rd time, September 1.
24th time, " 2.
25th time, " 3.
26th time, " 4.
27th time, " 5.
28th time, " 6.
29th time, " 7.
30th time, " 8.

HENRY G. PASCHALL.

Sworn to and subscribed before me this 4th day of November, 1870.

[SEAL.] D. G. JONES,
Notary Public, St. Louis Co.

Printer's fee..... 30.00
Affidavit..... .... .50

30.50

We, the jury, John F. Laumann, G. Couzekmann, Joshua Cheever, Anton Fashinger, Augustus Schulenberg, W. W. Ivory, six disinterested freeholders of the city of Saint Louis and residents
357 therein, being duly empanneled and sworn to faithfully and impartially perform the duties imposed upon us by an act of the General Assembly of the State of Missouri entitled "An act to revise the city charter of the city of Saint Louis," approved March 4th, A. D. 1870, in the case of opening Kennett street from North Market street to Ferry street, according to city ordinance No. 7110, approved January 26th, A. D. 1870—

Wherein The City of St. Louis is plaintiff and Martha S. Sweringen and Alex. W. Mitchell's est., Mary A. Pendleton, Wm. M. McPherson, Mullanphy Emigrant Relief Fund, J. Newhouse, tr.; Berry W. Hill, Isaac Walker est., Orleana Schaumberg, Lucy V. S. Ames, lessee; Henry Overstolz, Fred Schulenberg, Adolphus Boeckler, L. V. S. Ames, lessee; Martha A. Wells, Mary L. Tyler, Wm. C.

Taylor, Wm. H. Lackland, City of Saint Louis, Alex. Martin, Damuel Gaty, John S. McClure, Jos. Gartside, Wm. H. Glasgow, Julia Crosby, Sallie B. McPheeters, Louis Espenschild, Christ. F. Liebke and Chas. Schrage, E. C. Angelrodt, N. A. Destrahan, Emil Mallinckrodt, Henry S. Parker and Chas. R. Anderson, Samuel B. Stannard and Wm. and James Patrick, Marshal Brotherton, John Ferguson, Hill, Lemon & Co., H. S. Parker, Erastus Wells, Laclede Iron Manufacturing Co., Chas. L. and Louis W. Buschman, James McGuire are defendants, having heard the testimony on either side and having examined the ground to be taken for the proposed improvement, do find as follows:

That in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Martha S. Sweringen and Alexander W. Mitchell'- est. and Arthur B. Barrett, bounded and described as follows, viz: Beginning at a point in the north line of Warren street where the same is intersected by the east line of Kennett street as established, as aforesaid,
358 thence running northwardly with the said east line one hundred and twenty feet to the south line of land of M. A. Pendleton; thence running westwardly with the said south line in direct line at continuation one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line one hundred and twenty feet to the north line of Warren street; thence running eastwardly with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Martha S. Sweringen and Arthur B. and Alexander W. Mitchell est. — Barrett, without reference to the proposed improvement, to be the sum of two thousand dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to M. A. Pendleton, bounded and described as follows, viz:

Beginning at a point in the north line of land of Sweringen and Mitchell est. where the same is intersected by the east line of Kennett Str. as established, as aforesaid, thence running northwardly with the said east line forty feet to the south line of land of Wm. M. McPherson; thence running westwardly in direct line at continuation with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line forty feet to the north line of land — Sweringen and Mitchell est.; thence running eastwardly in direct linear continuation with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said M. A. Pendleton, without reference to the proposed improvement, to be the sum if three hundred dollars; also
359 that in order to open Kennett Str. as established, as aforesaid, it will be necessary to take a piece of ground belonging to Wm. M. McPherson, bounded and described as follows, viz:

Beginning at a point in the north line of land of M. A. Pendleton where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty feet to the south line of Montgomery street; thence running westwardly with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line eighty feet to the north line of land — M. A. Pendleton; thence running eastwardly in direct linear continuation with the said north line one hundred feet to the place of beginning.

And we ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said W. M. McPherson, without reference to the proposed improvement, to be the sum of one thousand seven hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Mullanphy Emigrant Relief Fund, bounded and described as follows, viz:

Beginning at a point in the north line of land of city of St. Louis where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty feet to the south line of Spring street; thence running westwardly with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence
360 running southwardly with the said west line eighty feet to the north line of land of city of St. Louis; thence running eastwardly with the said north line (in direct linear continuation) one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Mullanphy Emigrant Relief Fund, without reference to the proposed improvement, to be the sum of one thousand seven hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece — ground belonging to A. B. Barrett, Emma F. Nelson, J. T. Sweringen, tr.; Wm. H. Glasgow, Jr., bounded and described as follows, viz:

Beginning at a point in the north line of Spring street where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty feet to the south line of land of Ben. W. Hill; thence running westwardly in direct linear continuation with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line eighty feet to the north line of Spring street; thence running eastwardly with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said I. Newhouse, trustee, without reference to the pro-

posed improvement, to be the sum of one thousand seven hundred dollars.

Also that in order to open Kennett street, as established as aforesaid, it will be necessary to take a piece of ground belonging
361 to Ben. W. Hill, bounded and described as follows, viz.:

Beginning at a point in the north line of land of J. Newhouse, tr., where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty feet to the south line of land of Isaac Walker est.; thence running westwardly with the said south line in direct linear continuation one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line eighty feet to the north line of land of J. Newhouse, tr.; thence running eastwardly in direct linear continuation with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Ben. W. Hill, without reference to the proposed improvement, to be the sum of six hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Julia E. Walker, Geo. W. Bull, Jr.; Robert W. Bull, minor; Robert Maclay, guard. Julia E. Maclay; Emily D. Stier, Annie E. Gawtry, Mary M. Nevies, Augusta R. Jenkins, Isaac C. Walker, Thomas A. Walker, bounded and described as follows, viz:

Beginning at a point in the north line of land of B. W. Hill where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty feet to the south line of Wright street; thence running westwardly with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line eighty feet to the
362 north line of land of B. W. Hill; thence running eastwardly in direct linear continuation with the said north line one hundred feet to place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Julia E. Walker, G. W. Bull, Jr.; R. W. Bull, min.; Rob't Maclay, guard. Julia E. Maclay; Emily D. Spier, Ann E. Garoty, M. M. Neves, Aug. J. Jenkins, J. C. Walker, Thom. A. Walker, without reference to the proposed improvement, to be the sum of fifteen hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Orleans Schaumberg, Lucy V. Semple Ames, lessee, bounded and described as follows, viz: Beginning at a point in the north line of Wright street where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty feet to the south line of land of H. Overstolz *et al.*; thence running eastwardly in direct linear contin-

uation with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line eighty feet to the north line of Wright street; thence running eastwardly with the said north line one hundred feet to the place of beginning.

And we do ascertain the value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Orleans Schaumberg, Lucy V. Semple Ames, lessee, without reference to the proposed improvement, to be the sum of one thousand five hundred dollars.

Also that in order to open Kennett street as established, as
363 aforesaid, it will be necessary to take a piece of ground belonging to Henry Overstolz, Fred Schulenberg, and Adolphus Boeckeler, Lucy V. Semple Ames est., bounded and described as follows, viz: Beginning at a point in the north line of Schulenberg, Ames, les., where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty feet to the south line of land of M. A. Wills; thence running westwardly in direct linear continuation with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid, thence running southwardly with the said west line eighty feet to the north line of land of Scammberg, Ames, les.; thence running eastwardly in direct linear continuation with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Henry Overstolz, Fred. Schulenberg, Adolphus Boeckler, Lucy V. S. Ames, lessee, without reference to the proposed improvements, to be the sum of six hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Martha A. Wills, bounded and described as follows, viz:

Beginning at a point in the north line of land of H. Overstolz *et al.* where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty feet to the south line of Palm street;
363½ thence running westwardly with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line eighty feet to the north line of H. O. Overstolz *et al.*; thence running eastwardly in direct linear continuation with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Martha A. Wills, without reference to the proposed improvements, to be the sum of one thousand five hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Mary L. Tyler, bounded and described as follows, viz:

Beginning at a point in the north line of Palm street where the same is intersected by the east line of Kennett street as established,

as aforesaid, thence running northwardly with the said east line three hundred and fifteen feet to the south line of Tyler street; thence running westwardly with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line three hundred and fifteen feet to the north line of Palm street; thence running eastwardly with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Mary L. Tyler, without reference to the proposed improvements, to be the sum of five thousand dollars.

364 And that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Wm. C. Taylor, bounded and described as follows, viz:

Beginning at a point in the north line of Tyler street where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line one hundred and thirty-four feet to the south line of land of Lackland & Martin; thence running westwardly with the said south line (in direct linear continuation) one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line one hundred and thirty-four feet to the north line of Tyler street; thence running eastwardly with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Wm. C. Taylor, without reference to the proposed improvements, to be the sum of two thousand dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Wm. H. Lackland and Alex. Martin, bounded and described as follows, viz:

Beginning at a point in the north line of land of Wm. C. Taylor where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line forty-one feet and six inches to the south line of

365 land of Samuel Gaty; thence running westwardly with the said south line (in direct linear continuation) one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line forty-one feet and six inches to the north line of land of Wm. C. Taylor; thence running eastwardly with the said north line (in direct linear continuation) one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Wm. H. Lackland and Alex. Martin, without reference to the proposed improvement, to be the sum of two hundred dollars.

And that in order to open Kennett street as established, as afore-

said, it will be necessary to take a piece of ground belonging to Samuel Gaty, bounded and described as follows, viz:

Beginning at a point in the north line of land of Lackland & Martin where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line forty-one feet and six inches to the south line of land of John S. McCune; thence running westwardly in direct linear continuation with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line forty-one feet and six inches to the north line of land of Lackland and Martin; thence running eastwardly in direct linear continuation with the said north line one hundred feet to the place — beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described,
366 belonging to the said Sam'l Gaty, without reference to the proposed improvements, to be the sum of two hundred dollars.

And that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to John S. McCune, bounded and described as follows, viz:

Beginning at a point in the north line of land of Sam. Gaty where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty-three feet to the south line of land of Jas. Gartside; thence running westwardly in direct linear continuation with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west lines eighty-three feet to the north line of land of Sam. Gaty; thence running eastwardly in direct linear continuation one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said John S. McCune, without reference to the proposed improvement, to be the sum of four hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Joseph Gartside, bounded and described as follows, viz:

Beginning at a point in the north line of land of John S. McCune where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with
367 the said east line eighty feet to the south line of land of Wm. H. Glasgow; thence running westwardly in direct linear continuation with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line eighty feet to the north line of land of John S. McCune; thence running eastwardly in direct linear continuation with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belong-

ing to the said Joseph Gartside, without reference to the proposed improvement, to be the sum of four hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Wm. H. Glasgow, bounded and described as follows, viz:

Beginning at a point in the north line of land of J. Gartside, where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line eighty-two feet to the south line of Dock street; thence running westwardly with the said south line one hundred feet to the west line of Kennett —, as established as aforesaid; thence running southwardly with the said west line eighty-two feet to the north line of land of J. Gartside; thence running eastwardly in direct linear continuation with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described,
368 belonging to the said Wm. H. Glasgow, without reference to the proposed improvement, to be the sum of one thousnad two hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Mary L. Tyler, bounded and described as follows, viz:

Beginning at a point in the north line of Dock street where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line one hundred and eighty-five feet ten and three-fourth inches to the centre line of Rocky branch; thence running westwardly with the said centre line one hundred feet, more or less, to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line one hundred and ninety-eight feet ten and three-fourths inches to the north line of Dock street; thence running eastwardly with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to Mary L. Tyler, without reference to proposed improvement, to be the sum of one thousand five hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Julia Crosby, bounded and described as follows, viz:

Beginning at a point in the north line of land of Mary L. Tyler where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with
369 the said east line one hundred and three feet to the south line of land of Sallie B. McPheeters; thence running westwardly in direct linear continuation with the said south line forty feet to the east line of Kennett street as heretofore established; thence running southwardly with the said east line one hundred and three feet to the centre line of Rocky branch; thence running

eastwardly with the said centre line forty feet, more or less, to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Julia Crosby, without reference to the proposed improvement, to be the sum of four hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Sallie B. McPheeters, bounded and described as follows, viz:

Beginning at a point in the north line of Julia Crosby where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line two hundred feet to the south line of Buchanan street; thence running westwardly with the said south line forty feet to the east line of Kennett street as heretofore established; thence running southwardly with the said east line two hundred feet to the north line of land formerly owned by Julia Crosby; thence running eastwardly with the said north line forty feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid, and as above described,
370 belonging to the said Sallie B. McPheeters, without reference to the proposed improvement, to be the sum of one thousand dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Louis Espenschild, Christ. F. Liebke, and Chas. H. Schrage, bounded and described as follows, viz:

Beginning at a point in the north line of Buchanan street where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line two hundred and ninety feet to the south line of Angelrodt street; thence running westwardly with the said south line forty feet to the east line of Kennett street as established heretofore; thence running southwardly with the said east line two hundred and ninety feet to the north line of Buchanan street; thence running eastwardly with the said north line forty feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Louis Espenschild, Christ. F. Liebke, Chas. H. Schrage, without reference to the proposed improvement, to be the sum of one thousand five hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to E. C. Angelrodt, bounded and described as follows, viz:

Beginning at a point in the north line of Angelrodt street where the same is intersected by the east line of Kennett street
371 as established, as aforesaid, thence running northwardly with the said east line two hundred and twenty-seven feet and four inches to the south line of land of N. A. Destrehan; thence running westwardly with the said south line forty feet to the east line of Kennett street as established, as aforesaid; thence running southwardly with

the said east line two hundred and twenty-seven feet and four inches to the north line of Angelrodt street; thence running eastwardly with the said north line forty feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said E. C. Angelrodt, without reference to the proposed improvement, to be the sum of thirteen hundred and eighty-five dollars.

Also that an order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to N. A. Destrehan, bounded and described as follows, viz:

Beginning at a point in the north line of land of E. C. Angelrodt where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line two hundred and seven feet and two inches to the south line of Destrehan street; thence running eastwardly with the said south line forty feet to the east line of Kennett street as established, as aforesaid; thence running southwardly with the said east line two hundred and seven feet and two inches to the north line of land formerly owned by E. C. Angelrodt; thence running eastwardly with the said north line forty feet to the place of beginning.

And we do ascertain the actual value of the land proposed
372 and necessary to be taken, as aforesaid and as above described, belonging to the said N. A. Destrehan, without reference to the proposed improvement, to be the sum of one thousand and thirty-five dollars.

And that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to —— ——, bounded and described as follows, viz:

Beginning at a point in the north line of Mallinckrodt street where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line one hundred and twenty feet to the centre line of Gingrass creek; thence running westwardly with the said centre line to the east line of Kennett street as established, as aforesaid; thence running southwardly with the said east line one hundred and twenty-five feet to the north line of Mallinckrodt street; thence running eastwardly with the said north line forty feet and one and one-half inches to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said —— ——, without reference to the proposed improvement, to be the sum of seven hundred and sixty dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Marshall Brotherton and John S. Ferguson, bounded and described as follows, viz:

372½ Beginning at a point in the north line of Bremen avenue where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line three hundred and twenty-six feet and one and one-half inches to the south line of land of Hill, Lemon & Co.;

thence running westwardly with the said south line (in direct linear continuation) one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the west line three hundred and twenty-six feet and one and one-half inches to the north line of Bremen avenue; thence running eastwardly with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Marshall Brotherton and John S. Ferguson, without reference to the proposed improvement, to be the sum of two thousand dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Hill, Lemon & Co., bounded and described as follows, viz:

Beginning at a point in the north line of land of Marshall & Ferguson where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line four hundred and eighty-eight feet and nine and one-half inches to the south line of land of H. S. Parker *et al.*; thence running westwardly in direct linear continuation with the said south line one hundred feet to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line four hundred and eighty-eight feet and nine and one-half inches to the north line of land formerly owned by
373 Marshall and Ferguson; thence running eastwardly with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Hill, Lemon & Co., without reference to the proposed improvement, to be the sum of two thousand five hundred dollars.

Also that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Erastus Wells, bounded and described as follows, viz:

Beginning at a point in the north line of land — H. S. Parker *et al.* where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line one hundred and fifty — to the south line of Angelrodt street; thence running westwardly with the said south line one hundred feet and three-fourths inches to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line one hundred and fifty feet to the north line of land formerly owned by H. S. Parker *et al.*; thence running eastwardly with the said north line one hundred feet to the place of beginning.

And we do ascertain the actual value of the land proposed and neces-ary to be taken, as aforesaid and as above described, belonging to the said Erastus Wells, without reference to the proposed improvement, to be the sum of two thousand dollars.

Also that in order to open Kennett street as established, as aforesaid, — be necessary to take a piece of ground belonging to
374 Marshall Brotherton and John S. Ferguson, bounded and described as follows, viz:

Beginning at a point in the north line of Angelica street where the same is intersected by the *the* east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line two hundred and thirty feet, more or less, to the south line of land of Chouteau, Harrison & Valle; thence running westwardly in direct linear continuation with the said south line one hundred feet and three-fourths inches to the west line of Kennett street as established, as aforesaid; thence running southwardly with the said west line two hundred and thirty feet, more or less, to the present line of Angelrodt street; thence running eastwardly with the said north line one hundred feet and three-fourths inches to place of beginning.

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Marshall Brotherton and John S. Ferguson, without reference to the proposed improvement, to be the sum of twenty-five hundred dollars.

And that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to Chas. L. Louis, W. Buschmann, bounded and described as follows, viz:

Beginning at a point in the north line of *of* Augusta street where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line one hundred and thirty-seven feet and seven and one-half inches to the south line of an alley; thence running westwardly with the said south line forty feet and one-fourth inches to the east line of Kennett street as heretofore established; thence running southwardly with the said east line one hundred and thirty-seven — and seven and one-half inches to the north line of Augusta street; thence running eastwardly with the said north line forty feet and one-fourth inch to the place of beginning.

375

And we do ascertain the actual value of the land proposed and necessary to be taken, as aforesaid and as above described, belonging to the said Chas. L. and Louis W. Buschmann, without reference to the proposed improvement, to be the sum of four hundred dollars.

And that in order to open Kennett street as established, as aforesaid, it will be necessary to take a piece of ground belonging to James McGuire, bounded and described as follows, viz:

Beginning at a point in the north line of an alley where the same is intersected by the east line of Kennett street as established, as aforesaid, thence running northwardly with the said east line one hundred and thirty-seven feet and seven and one-half inches to the south line of Ferry street; thence running westwardly with the said south line forty feet and one-fourth inch to the east line of Kennett street as heretofore established; thence running southwardly with the said east line one hundred and thirty-seven feet and seven and one-half inches to the north line of an alley; thence running eastwardly with the said north line forty feet and one-fourth inches to the place of beginning.

And we do ascertain the actual value of the land proposed and

necessary to be taken, as aforesaid and as above described, belonging to the said James McGuire, without reference to the proposed improvement, to be the sum of one thousand dollars.

376 And we do further say the aggregate value of the land proposed and necessary to be taken, as aforesaid, for the purpose of opening Kennett street as established, as aforesaid, to be the sum of forty thousand four hundred and eighty dollars, of which sum we assess against the city of Saint Louis the sum of three thousand eight hundred and thirty-seven dollars, being the value of the property to the public generally, and the balance, being the sum of thirty-six thousand six hundred and forty-three dollars, we assess against the owners of property and the property benefitted by the proposed opening, according to the value of the property so assessed and in the proportion that said property is benefitted by said opening, as follows, viz:

(Here follow statements marked pp. 377, 378, and 379 and diagram marked p. 380.)

381 Mr. ALLEN: I offer now in evidence a deed entitled on the back Martha J. Sweringen, by the city marshal, to the city of St. Louis, page # 278, filed November 22nd, 1871.

Mr. BELL: We object to that deed.

COURT: What is the date?

A. It is October 16th, 1871, and recorded November 22nd, 1871, in the recorder of deed's office, Book 443, page 42.

Objection overruled.

Said deed was then read and is as follows:

To all to whom these presents shall come, I, John R. Slevin, marshall of the city of St. Louis, State of Missouri, send greeting:

Whereas, the City of St. Louis, on the ninth day of January in the year of our Lord, one thousand eight hundred and seventy-one before the land commissioner of said city, recovered judgment against Martha J. Sweringen and against the following-described real estate the sum of twenty-seven dollars and — cents for amount assessed by way of benefits against the property hereinafter described, in the matter of opening Kennett street together with one dollar and twenty-seven cents for costs and charges in the suit expended in the matter of said opening, upon which judgment a special execution was issued by said land commissioner, in favor of the said City of St. Louis, against the said Martha J. Sweringen and said premises as hereinafter described, dated the first day of September A. D. 1871, directed to the marshal of the city of St. Louis, and was to me the said marshal, delivered, a copy whereof is hereunto annexed and makes part of this deed; by virtue of which said execution I, the said marshal did levy upon and seize the real estate in said execution mentioned, and which is described as follows, to wit:

382 A lot of ground in block number three hundred and eight east (308 E.) in said city ninety feet in front on — street, by two hundred and twenty-four feet and eleven inches in depth,

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

bounded north by Tyler street, east by — south by Dean, west by Sweringen *et al.*, in the city and county of St. Louis, State of Missouri.

And having previously to the day of sale hereinafter mentioned, given at least twenty days' notice of the time and place of sale and of the real estate to be sold, and where situated, as the law directs, by advertisement in the "St. Louis Times" and "Taylicher Nemer Anzeiger des Westens" newspapers printed in said county of St. Louis; copies of which said advertisements are hereto annexed and make part of this deed; by virtue of which said execution and advertisements, I did, on the sixteenth day of October in the year of our Lord eighteen hundred and seventy-one between the hours of nine o'clock in the forenoon, and five o'clock in the afternoon of that day agreeable to said advertisements, at the northern door of the court-house in the city of St. Louis, during the October term of the circuit court of St. Louis county, for the year eighteen hundred and seventy-one expose to sale at public auction for ready money, the above-described real estate together with all rights, privileges and appurtenances thereto belonging, and the city of St. Louis being the highest and last bidder for said real estate, at the given price and sum of forty-six dollars and twenty-four cents the same was struck off and sold to the said city of St. Louis for that sum.

Now therefore, know ye, that in consideration of the premises, and of the said sum of forty-six dollars and twenty-four cents to me in hand paid by the said city of St. Louis, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law, I, John R. Slevin, marshal as aforesaid, do hereby
383 sell, transfer and convey to her the said City of St. Louis, the said above mentioned and described property, by virtue of the aforesaid execution and advertisements; to have and to hold the same to her the said City of St. Louis and her heirs and assigns forever.

In witness whereof, I, John R. Slevin, marshal of the said city of St. Louis, have hereunto set my hand and seal this sixteenth day of October, in the year of our Lord one thousand eight hundred and seventy-one. JOHN R. SLEVIN, *Marshal.* [SEAL.]

STATE OF MISSOURI, } *ss:*
City and County of St. Louis, }

Be it remembered that on this twentieth day of November, eighteen hundred and seventy-one, before me, Joseph Brown, mayor of the city of St. Louis, came John R. Slevin, marshal of the city of St. Louis, and acknowledged the execution of the foregoing deed by him as said marshal.

In testimony whereof I have hereto set my hand and caused the seal of said city to be hereto affixed the day and year in this behalf above written.

[SEAL.] JOSEPH BROWN, *Mayor.*

By the mayor:
JNO. J. FITZWILLIAM,
City Register.

City Marshal's Sale.

By authority of an execution issued by the land commissioner of the city of St. Louis in the matter of the opening of Kennett street, to me directed and returnable on the sixteenth day of October, one thousand eight hundred and seventy-one, in favor of the city of St. Louis and against Martha J. Sweringen and the following-
384 described real estate, to wit, a lot of ground ninety feet on — by two hundred and twenty-four feet and eleven inches in depth, bounded north by Tyler, east by —, south by Dean, and west by Sweringen *et al.*, in the city and county of St. Louis, State of Missouri, in block No. 308 E., I have levied upon and taken the lot of ground above described, and will, on the sixteenth day of October, one thousand eight hundred and seventy-one, next, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the northern front door of the court-house, in the city and county of St. Louis, State of Missouri, sell at public vendue, to the highest bidder, for cash, the lot of ground above described, to satisfy said execution and costs.

JOHN R. SLEVIN,
City Marshal.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Personally appeared before the undersigned (a notary public within and for the county of St. Louis) Henry Ewing, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "St. Louis Times," printed within the said county and State, the newspaper of which he is one of the publishers, for twenty-one times, the first insertion being on the twenty-second day of September and the last insertion on the fifteenth day of October, 1871, as follows:

September 22, 1st time.
" 23, 2nd time.
" 24, 3rd time.
" 26, 4th time.
" 27, 5th time.
" 28, 6th time.
" 29, 7th time.
" 30, 8th time.
385 October 1, 9th time.
" 3, 10th time.
October 4, 11th time.
" 5, 12th time.
" 6, 13th time.
" 7, 14th time.
" 8, 15th time.
" 10, 16th time.
October 11, 17th time.
" 12, 18th time.

October 13, 19th time.
" 14, 20th time.
" 15, 21st time.

HENRY EWING.

Sworn to and subscribed before me this twenty-first day of November, 1871.

[SEAL.] D. A. SUTTON,
N. P., St. L. Co.

(409.)

386 Stadtmarſchalls-Verkauf

Kraft eines Exekutionsbefehls, erlaſſen durch den Land-Commiſſär der Stadt St. Louis, in Sachen der Eröffnung der Kennett Straße an mich gerichtet und zurückzugeben am ſechszehnten Tage des Octobers ein tauſend acht hundert ein und ſiebenzig, zu Gunſten der Stadt St. Louis und gegen Martha G. Sweringen das folgendbeſchriebende Grundeigenthum, nämlich: Ein Stück Grund, neunzig Fuß bei zweihundert und vierundzwanzig Fuß elf Zoll Tiefe begrenzt nördlich durch Tyler, öſtlich durch —— —— ſüdlich durch Dean Straße und weſtlich durch Swering u. A. in der Stadt und den Caunty St. Louis, Staad Miſſouri, in Block No. 308 E. habe ich das oben beſchriebene Grundſtück mit Beſchlag belegt und werde daßelbe am ſechzehnten Tage des Oktober ein thauſend acht hundert und ein und ſiebenzig in den Stunden von neun Uhr Vormittags bis fünf Uhr Nachmittags des genannten Tages, an der nördlichen Frontthüre des Courthauſes in der Stadt St. Louis Staat Miſſouri, auf öffentlicher Auktion an den Meiſtbietenden gegen Baar verkaufen, um genannte Exekution und Koſten zu decken.

John R. Slevin,
Stadtmarſchall.

23 Sept. 21 m.

387 STATE OF MISSOURI, } ss:
County of St. Louis, }

Personally appeared before me, the undersigned (a notary public within and for the county of St. Louis), Carl Daenzer, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the St. Louis "Neuer Anzeiger des Westens," printed and published within the said county and State, the newspaper of which he is printer, for twenty-one consecutive days, the first insertion being on the twenty-third day of September, 1871, and the last insertion on the sixteenth day of October, 1871, as follows:

1st	insertion,	in vol. 9, No. 224,	dated	September	23, 1871.
2nd	do.	vol. 9, No. 39,	dated	September	24, 1871.
3rd	do.	vol. 9, No. 225,	dated	"	25, 1871.
4th	do.	vol. 9, No. 226,	dated	"	26, 1871.
5th	do.	vol. 9, No. 227,	dated	"	27, 1871.
6th	do.	vol. 9, No. 228,	dated	"	28, 1871.
7th	do.	vol. 9, No. 229,	dated	"	29, 1871.
8th	do.	vol. 9, No. 230,	dated	"	30, 1871.

9th	do.	vol. 9, No. 231, dated	October	2, 1871.
10th	do.	vol. 9, No. 232, dated	"	3, 1871.
11th	do.	vol. 9, No. 233, dated	"	4, 1871.
12th	do.	vol. 9, No. 234, dated	"	5, 1871.
13th	do.	vol. 9, No. 235, dated	"	6, 1871.
14th	do.	vol. 9, No. 236, dated	"	7, 1871.
15th	do.	vol. 9, No. 237, dated	"	9, 1871.
16th	do.	vol. 9, No. 238, dated	"	10, 1871.
17th	do.	vol. 9, No. 239, dated	"	11, 1871.
18th	do.	vol. 9, No. 240, dated	"	12, 1871.
19th	do.	vol. 9, No. 241, dated	"	13, 1871.
20th	do.	vol. 9, No. 242, dated	"	14, 1871.
21st	do.	vol. 9, No. 243, dated	"	16, 1871.

C. DAENZER.

388 Sworn to and subscribed before me this eighteenth day of October, 1871.

[SEAL.] AUGUST AHRENS,
Notary Public.

Printer's fee	15.59
Affidavit	.50
	16.09

No. ninety.

The City of St. Louis to the marshal of the city of St. Louis, Greeting:

Whereas the City of St. Louis, on the ninth day of January, in the year of our Lord one thousand eight hundred and seventy-one, before the land commissioner of said city, recovered judgment against Martha J. Sweringen and the property hereinafter described for the sum of twenty-seven dollars and — cents for amount assessed by way of benefits against said property in the matter of opening Kennett street, together with one dollar and twenty-seven cents for costs and charges in the suit expended in the matter of said opening: These are therefore to command you that of said real estate, to wit, a lot in block number 3086, in said city, ninety feet in front on — street by two hundred and twenty-four $1\frac{1}{2}$ feet in depth, bounded north by Tyler, east by —, south by Dean, west by Sweringen *et al.*, you cause to be made the debt and costs, and that you have the same before the land commissioner on the sixteenth day of October next, to satisfy the debt and costs aforesaid, and that you certify how you execute this writ.

Witness John H. Terry, land commissioner of the city of St. Louis, with the common seal of the city hereto affixed, this first day of September, in the year of our Lord eighteen hundred and seventy-one.

JOHN H. FERRY,
Land Commissioner.

Attest: JNO. J. FITZWILLIAM,
City Register.

389 STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office November 22nd, 1871, and is truly recorded in Book 448, page 42.

Witness my hand and official seal the date last aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

I offer in evidence certified copy of quitclaim deed from the city of St. Louis to Martha J. Sweringen, recorded in Book 603, page 478, dated March 29th, 1879, signed by Henry Overstolz, mayor, and E. L. Adreon, comptroller, and filed for record on March 29th, 1879.

COURT: Who is it from?

A. From the City of St. Louis to Martha J. Sweringen.

Mr. JOHNSON: Conveying back the property; in other words, redeeming under the law.

Mr. ROBERT: Nine years later?

A. Yes, sir.

Said deed was then read and is as follows:

No. —. Quitclaim Deed on Redemption Certificate.

Know all men by these presents, that whereas the city marshal of the city of St. Louis did on the sixteenth day of October 1871, at the court-house in said city of St. Louis sell the real estate described as follows, to wit: "A lot of ground in block number three hundred eight east (308 E.) in said city ninety feet in front on — street by two hundred and twenty-four feet eleven inches in depth, bounded north by Tyler, east by —, south by Dean, west by Sweringen *et al.*, in the city and county of St. Louis, State of Missouri" which said real estate was sold by said city marshal to satisfy the city's claim thereon for benefits assessed against Martha J. Sweringen, in opening Kennette street, and at which sale the said city of
390 St. Louis became the purchaser of said property. And whereas Martha J. Sweringen has this day paid to the treasurer of said city the sum of seventy $\frac{55}{100}$ dollars being the amount of said claim and costs for which said property was sold together with interest thereon accrued since the day of sale aforesaid. Now therefore in consideration of the premises the said city does hereby remise, release and forever quitclaim unto the said Martha J. Sweringen the real estate above described. To have and to hold the same unto the said Martha J. Sweringen and to her heirs and assigns forever this deed is intended to convey only such title as the city acquired by marshal'- deed above cited.

In testimony whereof we the undersigned mayor and comptroller of the city of St. Louis in compliance with the charter have hereunto set our hands and caused the common seal of the city of St.

Louis to be affixed this twenty-seventh day of March eighteen hundred and seventy-nine.

[SEAL.] HENRY OVERSTOLZ, *Mayor.*
E. L. ADREON, *Comptroller.*

Attest: RICH'D WALSH, *Register.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this twenty-seventh day of March, A. D. eighteen hundred and seventy-nine, before me, the undersigned, a notary public within and for the county and State aforesaid, duly commissioned and qualified, personally came Henry Overstolz, mayor of the city of St. Louis, and E. L. Andreon, comptroller of the city of St. Louis, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein named.

Witness my hand and official seal the date above written.

[SEAL.] GEO. A. SCHULTE,
Notary Public, City of St. Louis, Mo.

Qualified Nov. 19, 1878.
391 Commission expires Nov. 11, 1882.

Filed and recorded March 29, 1879, @ 9.04 a. m.
C. W. IRWIN, *Recorder.*

NOTE.—The word "city." on line 27, page 478, of this record, is interlined in the original deed.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by the City of St. Louis to Martha J. Sweringen, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office, in Book 603, page 478.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this 14th day of March, A. D. 1896.
M. D. LEWIS, *Recorder.*

Mr. ALLEN: I offer to prove by a representation of the comptroller's office that damages, less benefits, were paid to Mary L. Tyler for the property just east and just west of Kennett street from Dock street to the center of Rocky branch, as shown on the plat in the condemnation proceedings—damages were paid to Mary L. Tyler.

Mr. BELL: We object to that as absolutely irrelevant.

Objection overruled.

Mr. ALLEN: I offer to show benefits were paid for property in city

block 660 E. and east of property shown on plat in condemnation proceedings.

Mr. BELL: To that we object. We are objecting to that as evidence.

392 Objection overruled.

Mr. ALLEN: Are you willing to admit that if an officer of the comptroller'- office was here he would testify to that?

Mr. BELL: Do you say he would? Have you examined him?

Mr. ALLEN: I have examined the record with Mr. Gabel, assistant comptroller.

Mr. BELL: Then we admit that the assistant comptroller would so testify, but we object to the testimony as utterly incompetent.

Mr. ALLEN: Mary L. Tyler paid damages, less benefits?

Mr. BELL: Yes.

——: Sallie B. McPheeters, who paid damages, less benefits, represented by voucher # 6?

Mr. BELL: Yes.

——: Ben. W. Lewis, who paid for property in block 660 E., according to the plat that is attached to condemnation proceedings and verdict, and it is assessed against him.

Mr. BELL: We will consider them proved, subject to our objections.

Objection overruled.

Mr. ROBERT: We will offer the leases to Joy, conforming to Mr. Moulton's testimony. They are correct, I know; they are all approved by Leverett Bell, city counselor, April 21st, 1891.

Said lease was then read and is as follows:

This agreement, made this twentieth day of April 1891, by and between the City of St. Louis, through Dan. Able, harbor and wharf commissioner, and John D. Stevenson, comptroller, party of the first part, and Justin E. Joy party of the second part, under authority of ordinance No. 16161 approved April 9th 1891, witnesseth:

That the said party of the first part does by these presents, in consideration of the covenants hereinafter mentioned rent to the said Justin E. Joy party of the second part for a period of fifteen years, ending on the ninth day of April 1906, the following-

393 described portion of the unimproved wharf as follows: Beginning at the intersection of the south line of Dock street and the western wharf line, thence south on said western wharf line one hundred and sixty-one feet and four inches; thence east on a line parallel to the south line of Dock street produced eastwardly to the west line of the St. Louis, Keokuk and North Western railroad rights of way one hundred and fifty-one feet eleven and three-eighths inches; thence northwardly with the west line of said right of way one hundred and sixty-two feet seven and one-quarter inches to the south line of Dock street produced eastwardly; thence west with the south line of Dock street produced one hundred and sixty feet one and seven-eight inches to the place of beginning. Also beginning at a point in the line of the said St. Louis, Keokuk and North Western Railroad Company's right of way one hundred and

sixty-two feet seven and one-quarter inches south of the south line of Dock street produced, and in a line parallel with the south line of Dock street produced two hundred and two feet nine and one-quarter inches east of the west line of the wharf; thence east and parallel with the south line of Dock street produced two hundred and eighty-eight feet two and three-eighth inches to the east line of the wharf; thence with *with* said east line of the wharf four hundred and fifty-one feet four inches; thence west on a line parallel with the south line of Dock street produced two hundred and eighty-five feet three-eighths inches to the east line of said St. Louis, Keokuk and — Western Railroad Company's right of way; thence southwardly with the east line of said right of way four hundred and fifty-one feet ten and three-quarter inches to the place of beginning.

Said portion of the wharf shall be used by the said Justin E. Joy for the purpose of the landing and storing thereon of lumber.

394 Before availing himself of the privileges herein granted, the said Justin E. Joy shall file with the city register his written acceptance of the conditions of the privileges herein granted, and his bond in the sum of two thousand dollars, with two or more good and sufficient securities, conditioned that at the expiration of the term of this lease he, the said Justin E. Joy, shall at his own cost and expense, remove from said portion of wharf all erections and appurtenances that he may place thereon, so as to leave said portion of wharf — from obstructions to public traffic, to the satisfaction of the harbor and wharf commissioner.

In consideration of the privileges herein granted the said Justin E. Joy shall pay to the City of St. Louis an annual rental of six hundred dollars for the 1st 5 years, $1,200 for the 2nd 5 years, and $1,800 for the last 5 years, payable semi-annually in advance.

Nothing in this lease, or in the ordinance authorizing the same, shall be so construed as to exempt steamboats, barges or other water craft, landing at the portion of wharf herein described from the payment to the city of St. Louis of the lawfully established wharfage rates, nor shall said lessee or assigns ever make any charge for landing, at the said portion of wharf, by steamboats, barges or other water craft having business there.

The City of St. Louis reserves the right to alter, amend or repeal the ordinance authorizing this lease at any time.

In testimony whereof, the parties above named have hereto set their hands and seals, this twentieth day of April, 1891.

THE CITY OF ST. LOUIS,
By DAN. ABLE,
Harbor and Wharf Commissioner.
JOHN D. STEVENSON,
Comptroller.
[SEAL.] JUSTIN E. JOY.

CITY COUNSELLOR'S OFFICE, *April 20th*, 1891.

The foregoing agreement is in due form according to law.

LEVERETT BELL,
City Counsellor.

395 Filed April 29th, 1891.

JOS. A. WHERRY, *Register.*

Mr. ROBERT: Also ordinance 16161.
Said ordinance was then read and is as follows:

(16161.)

An ordinance to lease to Justin E. Joy a portion — the unimproved wharf at and north of the foot of Dock street.

Be it ordained by the municipal assembly of the city of St. Louis as follows:

SECTION 1. The harbor and wharf commissioner and comptroller are hereby authorized and directed to lease a portion of the unimproved wharf at the foot of Dock street, and north thereof, to Justin E. Joy for a term of fifteen years from the date of the approval of this ordinance. Said portion of wharf is described as follows: Beginning at the intersection of the south line of Dock street and the western wharf line; thence south on said western wharf line one hundred and sixty-one feet and four inches; thence east of a line parallel to the south line of Dock street produced eastwardly to the west line of the St. Louis, Keokuk and Northwestern Railroad right of way, one hundred and fifty-one feet eleven and three-eighths inches; thence northwardly with the west line of said right of way one hundred and sixty-two feet seven and one-quarter inches to the south line of Dock street produced eastwardly; thence west with the south line of Dock street produced, one hundred and sixty feet one and seven-eighths inches to the place of beginning. Also beginning at a point in the east line of the said St. Louis, Keokuk and Northwestern Railroad Company's right of way one hundred and sixty-two feet, seven and one-quarter inches, south of the south line of Dock street produced and on a line parallel with the south line of Dock street produced two hundred and two feet, nine and one-quarter inches east of the west line of the wharf; thence
396 east and parallel with the south line of Dock street produced two hundred and eighty-eight feet two and three-eighths inches to the east line of the wharf; thence north with said east line of wharf four hundred and fifty-one feet four inches; then west on a line parallel with the south line of Dock street produced, two hundred and eighty-five feet three-eighths inches to the east line of said St. Louis, Keokuk and Northwestern Railroad Company's right of way; thence southwardly with the east line of said right of way four hundred and fifty-one feet ten and three-quarters inches to the place of beginning. Said portion of the wharf shall be used by the said Justin E. Joy for the purpose of landing, hauling, and storing thereon lumber.

SEC. 2. For the privilege herein granted the said Justin E. Joy shall pay to the city of St. Louis for the first five years the sum of six hundred dollars per annum; for the second five years the sum of twelve hundred dollars per annum, and for the last five years the

sum of eighteen hundred dollars per annum, payable semi-annually in advance.

SEC. 3. Nothing in this ordinance, or in the lease hereby authorized to be made, shall be so construed as to exempt steamboats, barges or other water craft landing at the portion of wharf above described, from the payment to the city of St. Louis of the legality established wharfage rates, nor shall said Justin E. Joy ever charge, directly or indirectly, any steamboat, barge or other water craft for the privilege of landing at said portion of wharf.

SEC. 4. Nothing in this ordinance, or in the lease authorized shall be so construed as to interfere with the privileges heretofore granted to the St. Louis, Keokuk and Northwestern Railroad Company under authority of ordinance number fifteen thousand three hundred and seventy-seven, approved December the twenty-fourth, eighteen hundred and eighty-nine.

397 SEC. 5. Before availing himself of the privileges herein granted, the said Justin E. Joy shall file with the city register his written acceptance of the conditions of the privileges herein granted, and his bond in the sum of two thousand dollars, with two or more good and sufficient securities, conditioned that at the expiration of the term of the lease hereby granted, he, the said Justin E. Joy, shall at his own cost and expense, remove from said portion of wharf all erections and appurtenances that he may place thereon, so as to leave said portion of wharf free from obstruction to public traffic to the satisfaction of the harbor and wharf commissioner.

SEC. 6. The privileges herein are not transferable without the written consent of the harbor and wharf commissioner.

SEC. 7. The city of St. Louis reserves the right to alter, amend or repeal this ordinance at any time.

Approved April 9, 1891.

Mr. BELL: These are all subject to our objections.

Objection overruled.

COURT: These benefits refer to the establishment of Kennett street?

Mr. DRABELLE: Yes; both east and west of Kennett Str.

EARNEST BOEDICKER, being duly sworn on behalf of defendants, testified as follows:

Direct examination by JOHN H. DRABELLE, Esq.:

Q. Please state your name.
A. Earnest Boedicker.
Q. What is your occupation?
A. Draughtsman in the assessor's office.
Q. Deputy in the assessor's office?
A. Yes, sir.
Q. What are your duties?
A. I am a draughtsman. I draw plats.
Q. For what purpose?
A. For the running of the office and assessment of property.

398 Q. What kind of books have you in the office for the purpose of making assessments of property?

A. A set of plat books and a set of record books.

Q. Have you those plat books from 1874 down to the present time?

A. Record books; yes.

Q. You have them?

A. Yes, sir.

Q. I will ask if you know whether block 2544 first appears on the record book of your office.

A. In 1875, I believe.

Q. Have you got the record book of 1874 and 1877, containing that block and property adjoining it?

A. Yes, sir.

Q. Will you produce it at once?

—. ——.

Mr. BELL: When were you first employed in the assessor's office?

A. In 1884.

Q. In 1884, and when was this book made?

A. 1874.

Q. Did you make this book?

A. No.

Q. Do you know the gentlemen who made this book?

A. No.

Q. Do you know anything about the correctness of his work?

A. No.

Mr. BELL: I object to the book and object to the witness testifying from the book. Here is a gentleman, a draught-man in the assessor's department. He commenced work there in 1884, and he produces a record made in 1874. Personally he did not make it; has no knowledge whether it is correct or otherwise.

COURT: Objection overruled.

Mr. DRABELLE: We offer in evidence this record book of 1874 to 1876 of block # 2544. We offer all the plat book from 1874.

COURT: This, I understand, shows block 2544.

Mr. DRABELLE: Yes.

Mr. ALLEN: Who makes out the tax bills from these plats?

A. The clerks in the office.

Q. What year is that book?

A. That is 1884 to 1886.

We offer that in evidence.

399 Q. That book commenced in 1884?

A. Yes, sir.

Q. You are a draughtsman?

A. Yes, sir.

Q. What do these boundary lines mean? What are they boundaries of?

A. The boundaries of property the way it is assessed.

Q. This city block 2544 is assessed from 1884 to 1886?

A. Yes, sir.
Q. What is that bounded south by?

Mr. BELL: We object to that.

Ans. Dock street.
Q. What is it bounded east by?
A. The wharf.

Mr. JOHNSON: We object to this. It does not show any wharf.
COURT: Objection overruled.

Q. What is east of city block 2544?
A. The wharf.

Mr. BELL: We object to the answer.

Q. Can you state and will you state whether there is anything east of the line—the east line of city block 2544—assessed which has been assessed since 1884?

Mr. BELL: We object to that. He does not know anything about it except what he gathers from looking at the plats and records. He says that this block is bounded east by a wharf. I venture to say he never saw a wharf.
COURT: Objection overruled.

Q. Is anything assessed east of the wharf line—east of the west line of the wharf?

Mr. BELL: How does he know?

Q. Has any property between the north line of Dock street and the north line of the property marked Mary L. Tyler and east of the line marked west line of the wharf which is the east line of city block 2544 been assessed since 1874?

Mr. BELL: We object to that question.
COURT: Objection overruled.

A. Not according to the books.

400 Mr. JOHNSON: We object to the answer.

Q. These are official books?
A. Yes, sir.
Q. These books show what property has been assessed and what has not been assessed?
A. Yes, sir.

Mr. ALLEN: We make the offer of the books.
Which are as follows:

(Here follow maps marked pp. 400 to 406, incl.)

Dock Street

No. 4790
Swearingen
St. Louis
p. 400

Tigard Jos. G. 75 Jr.

Dean Elija A. 80 Jr.

Swearingen Martha E. 40.

96

Tyler Mary L. 120.

120
92

Crosby Julia 42.

Espenschied Louis
Liebke & Schrage
Lessees 42.

Scott Mary B. 42.

Espenschied Louis
Liebke & Schrage
Lessees 42.

McPheeters Sallie B 20.
1882

Buchanan Street.

Street

Block 3544

A true copy of Plat on file in the Office
of the Assessment of the Revenue for
the years 1874 - 1875 - 1876.

C. H. Pfeiffer
Pres. Board of Assessors.

A. Yes, sir.
Q. What is that bounded south by?

Mr. Bell: We object to that.

Ans. Dock street.
Q. What is it bounded east by?
A. The wharf.

Mr. Johnson: We object to this. It does not show any title.
Court: Objection overruled.

Q. What is east of city block 2544?
A. The wharf.

Mr. Bell: We object to the answer.

Q. Can you state and will you state whether there is anything east of the line—the east line of city block 2544—exposed which has been exposed since 1847?

Mr. Bell: We object to that. He does not know anything about it except what he gathers from looking at the plats and records. He says that this block is bounded east by a wharf. I venture to say he never saw a wharf.
Court: Objection overruled.

Q. Is anything exposed east of the wharf line—east of the wharf line of the wharf?

Mr. Bell: How does he know?

Q. Has any property between the north line of [illegible] street and the north line of the property marked Mary J. Sweeny and the line marked west line of the wharf which is the east line of block 2544 been exposed since 1847?

Mr. Bell: We object to that question.
Court: Objection overruled.

A. Not according to the levee.

Mr. Johnson: We object to the answer.

Q. These are official books?
A. Yes, sir.
Q. These "levee sheets" and property has been exposed [illegible] has not been exposed?
A. Yes, sir.

Mr. Allen: We [illegible]
Which are as follows: [illegible] to 400, incl.)

No. 470.
Lovejoy
to
St. Louis

p. 401

Dock Street

Tilford Jos. G.
10-25-73

Dean Eliza N.

Swearingen Martha J. Mrs

Tyler McK. L.

Crosby Julia

Espenschied Louis
Lietke w Schrage

Scott Mary B.

Espenschied Louis
Lietke w Schrage
Lessee

Mc Phetters Sallie B.

Buchannan Street

Street Co's

Block 2544

A true copy of Plat on file in the Office
of the Assessment of the Revenue for
the years 1877-1878-1879

A. M. Thurlemire
Pres. Board of Assessors

No. 470
Surveyor's Book p. 1402
H. Logue

Dock Street

Tilford Joseph C.
Dean Elisa A.
Swearingen Martha J. Mrs.
Tyler Mary V.
Crosby Julia B.
Espenschied Louis & Liebke & Schrage
Scott Mary B.
Espenschied Louis & Liebke & Schrage
McPheeters Sallie B.

Street 60'x

Block 1544

Buchanan Street

A true copy of Plat on file in the Office of the Assessment of the Revenue for the years 1880. 1881- 1882- 1883

C. H. Schlueter
Pres. Board of Assessors.

No 470 Surveyor's Book St Louis p 403

A true copy of Plat on file in the Office of the Assessment of the Revenue for the years 1884-1885-1886

G. H. Kuchenbecker
Pres. Board of Assessors.

Dock Street

Tilford Jos. G.

Dean Elisha A.

Springer Martha J. Mrs.

Tyler Mary

Mississippi River

Olcott Chas H. & Dorris J.S.

Eppenschied Louis & Liebke & Schrage

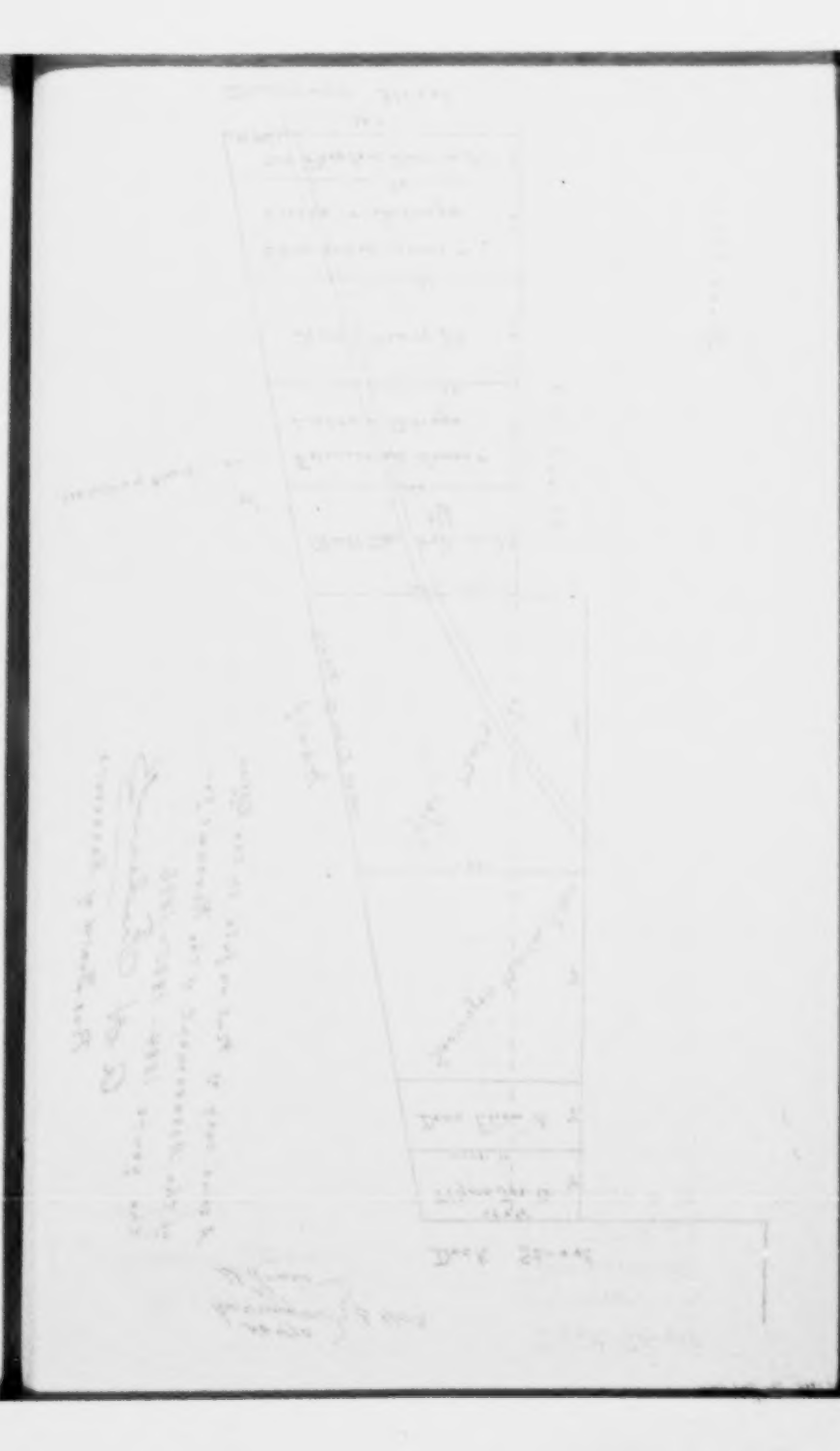
Scott Mary B.

Eppenschied Louis & Liebke & Schrage

Mc Pheeters Sallie B.

Buchanan Street

Block 2544



No. 470
Lemmon
St Louis
p 404

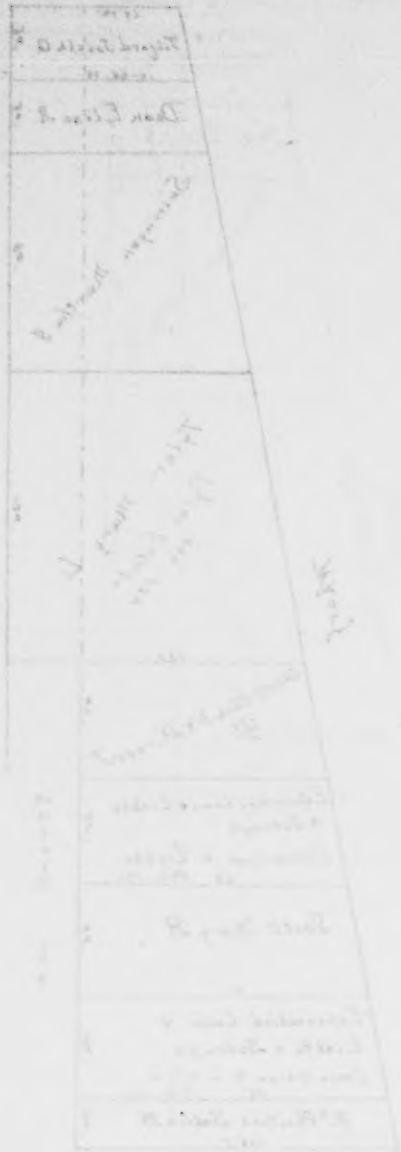
Dock Street

Tilford Joseph G. 50'
Dean Elisha R. 50'
Scarrigan Martha 90'
Tyler Mary V. 120'
Tyler Estate 206-524
Myers
Olcott Chas. H. & Duross J. 97'
Espenschied Louis & Liebke & Schrage 40'
Espenschied & Liebke 48 149-120
Scott Mary B. 40'
Espenschied Louis & Liebke & Schrage 43'
Espenschied & Liebke 84' 149-120
McPheeters Sallie B. 40'
Buchanan Street

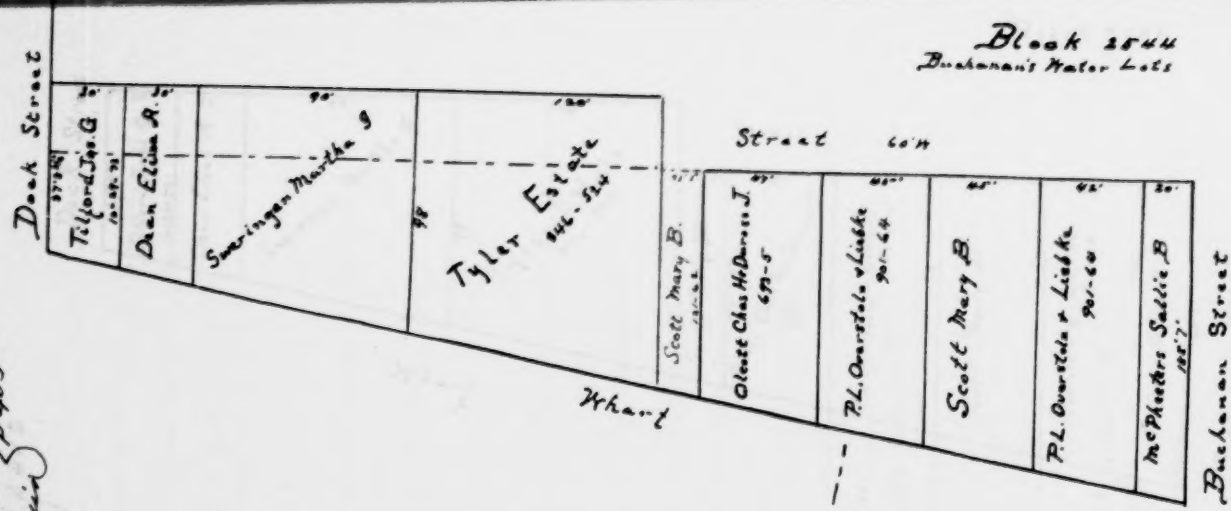
Block 2544
Buchanan's Water Lot

Strand 60'W

A true copy of Plat on file in the Office of the Assessment of the Revenue for the years 1887-1888-1889
G. A. Finkelnburg
Pres. Board of Assessors



2282



Pa 470 Smerigan to Lefevre B 405

A true copy of Plat on file in the Office of the Assessment of the Revenue for the years 1890 - 1891 - 1892

A. H. Frederick

Pres. Board of Assessors.

No 470
Sarrington
St Louis
406

Dock Street

Tillford Josh G
10-28-74

Dean Eliza A

Sarrington Martha J

Ward

Tyler Estate
84-334

Scott Mary B
127-62

Olcott Chas H & Dorris J
673

Street

Overstolz & Liebke
Liebke Christ F

P.L. Overstolz & Liebke
901-64

Scott Mary B

Overstolz & Liebke
Liebke Christ F

P.L. Overstolz & Liebke
901-64

McPheeters Saddie B
2174

Buchanan Street

Block 1544

A true copy of Plat on file in the Office of the Assessment of the Revenue for the years 1893-1894-1895

G. H. Kuhlmann
Pres. Board of Assessors.

407 Cross-examination by Mr. BELL:

Q. Where were you in 1870?
A. In St. Louis.
Q. How old were you?
A. Eight years old.
Q. You knew nothing about these books at that time?
A. No, sir.
Q. Do you know anything about the books now except what you gather from an examination?
A. They are there to look at the books.
Q. None of these books were made by you?
A. None of these.
Q. Was any survey made by you?
A. No.
Q. Do you know of any surveys made in the neighborhood of Dock and the river?
A. No.
Q. Have you personally been on that ground?
A. No, sir.
Q. Do you know anything about the property except what you gather from these books?
A. No.
Q. You have nothing to do with the assessment of property yourself?
A. No, sir.
Q. You are employed simply as a draughtsman?
A. Yes, sir.
Q. You make plats as you are directed to make them?
A. Yes, sir.
Q. In point of fact, you made none of these plats?
A. I worked some on later ones.
Q. These plats referred to?
A. Yes, sir.
Q. Who told you to make an examination of the books in this case?
A. The gentleman over there asked me to get them out?
Q. What is his name?
A. Mr. Allen.
Q. What did he tell you to do?
A. He did not tell me to do anything—just to get the books and see whether the property was assessed east of the wharf.
Q. You looked all through the books?
A. Yes, sir.
Q. Have you looked through anything except the assessment of block named?
A. No.

408 Q. All you know when you say this property has not been assessed is that you see that on the plats containing the block which has been referred—the property is not assessed as being in those blocks?

A. That is all I know about it.

Mr. BELL: I move to strike out the witness' testimony.
COURT: Objection overruled.
We offer now the plats.
Mr. BELL: We object to the books.
COURT: Objection overruled.

We offer the book from 1874 to 1876, the second book for 3 years; all the years up to 1896.
We offer all plat books from 1874 to 1896.
COURT: You now offer them for the purpose of showing what property was assessed, and this property was not assessed.
Mr. BELL: It shows this property was not assessed, this block, because it was not in it.

Mr. BOEDICKER:

Q. Did you ever know of any assessment against city property?

Mr. BELL: I object to that question. What has that got to do with the case?
COURT: Objection overruled.

A. I do; yes.
Q. Did you ever know any assessments against property marked as street or a wharf?

Mr. BELL: I object to the question.
I withdraw the question.

Q. When you find on a plat of the records a piece of property marked street or wharf, did you make any assessment on the property?

Mr. BELL: I object to that. What does that establish?
COURT: Mr. Reporter, these plats you will please mark taken subject to objections.
Objections overruled.
409 Mr. ROBERT: We want to present to your honor a petition to compel these parties to produce all their tax receipts for any taxes paid on any part of strip on their plat # 1. If they object to the books we ask that they be compelled to produce the tax receipts.
Mr. ALLEN: We offer in evidence certified copy of the patent from the Government of the United States to Rufus Easton, dated May 18th, 1826, and certified by S. W. Lamor*anx*, Department of the Interior, District of Columbia.
Mr. JOHNSON: We object to that as irrelevant and not covering any of the land in controversy.
COURT: Objection overruled.
Said copy of the Easton patent was then read and is as follows:

The United States of America to all to whom these presents shall come, Greeting:

Know ye, that Rufus Easton under Gabriel Cerri's representatives has deposited in the General Land Office a certificate numbered one hundred and eighty-three of the recorder of land titles at St. Louis, Missouri, whereby it appears that in pursuance of the several acts of Congress for the adjustment of claims to land, the said Rufus Easton under Gabriel Cerre's representatives has been confirmed in his claim to a tract of land containing one hundred and fifty-six acres and fifty-two-hundredths of an acre, bounded and described as follows, to wit: Beginning at a stone the southwest corner of the survey of four hundred and one-half arpens of land for Pearose; thence south twenty-four degrees; east twenty-five chains and eighty links to a stone, thence south twenty-one degrees east at thirty-six chains and ninety links the old stone corner on the bluff thirty-nine chains and seventy-five links to the Rocky branch, thence meandering down the branch, east six chains, north thirteen chains, north fifty-three degrees forty-five minutes east eight chains and
410 *and* fifty links to a point at the mouth of the branch, thence up the Mississippi river, north ten degrees west, nine chains, north seventeen chains and sixty links to the north bank of a creek, thence up the creek with its meanders north seventy-eight degrees west, three chains, north thirty-five degrees west, three chains, north twenty-four degrees west, ten chains, north eighteen degrees west, fifteen chains, north fourteen degrees, west five chains, and twenty-five links to Penrose's lower corner, a stone, thence with Penrose's line south fifty-five degrees west twenty-seven chains to the beginning; being designated on the connected plats as number two thousand and forty-two and being in township forty-five, north of range seven east of the fifth principal meridian line.

There is therefore granted by the United States into the said Rufus Easton under Gabriel Cerre's representatives and to his heirs the tract of land above described. To have and to hold the said tract with the appurtenances unto the said Rufus Easton under Gabriel Cerre's representatives and to his heirs and assigns forever.

In testimony whereof, I John Quincy Adams, President of the United States have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the first day of May in the year of our Lord one thousand eight hundred and twenty-six and of the Independence of the United States the fiftieth.

(Signed) J. Q. ADAMS.

By the President:

(Signed) GEO. GRAHAM,
Commissioner of the General Land Office.

411 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March* 26, 1896.

I, S. W. Lamorenx, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent, dated May 1, 1826, from the United States to Rufus Easton, for certain lands situated within the State of Missouri, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. W. LAMORENX,
Commissioner of General Land Office.

Mr. ALLEN: Your honor will remember, in response to the application made by defendants you issued an order upon plaintiffs to produce all tax receipts from 1871 to 1895, inclusive. The counsel for plaintiff has handed us a bundle of tax receipts, which appear to be from the year 1875 to and inclusive the year 1895, except the year 1893, and I call your attention to the fact that there are no tax receipts for 1871, 1872, 1873, 1874, and 1893. I ask for their production.

Mr. JOHNSON: We cannot produce anything we cannot find.

Mr. ALLEN: I call your attention to the fact that nowhere on these tax receipts does there appear any description of the property which is sued for in this suit, but that city block 308 east shows the payment of taxes on 90 feet; city block 308, 90 feet on Main street; city block 660, 90 feet on Kennett street; city block 660, east on Kennett street; city block 660 west on Kennett street, and
412 that those last three lots are marked as bounded north by Tyler, east by a line marked do., west by Kennett street, and the lot in city block 660 east north by Tyler, east by line of block marked do., south by do., and west by line of block; city block 660 west is bounded north by Tyler, east by Kennett street, south by do., and west by *pro* Main street. We want to call your honor's attention to the fact that these describe these several parcels as being in certain blocks of the city bounded by the streets. Your honor will remember 308. 660 west is the other side of Kennett street, then 660, then 660 east, and then block 2544, 2544 being bounded on this receipt by the wharf.

Mr. BELL: We want to object to this bill and all bills of a similar character—I believe they are all alike—on the ground that the bill does not include the property sued for in this case.

COURT: I am inclined to think these bills are competent.

Objection overruled.

Said tax bills were then read and are as follows:

(Here follow statements marked pp. 413 to 438, incl.)

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439 Mr. ROBERT: I would like to identify these bills by city book and bill number and year.

Mr. ALLEN: The bill of 1875 is made out against Martha J. Sweringen.

I offer tax receipt for 1876, City Book 22, bill 2176, made out against Martha J. Sweringen, 1877. There appears to be two bills. One of them does not contain the property mentioned, here sued for. It does not contain city block 2544. The other one does contain the ninety feet in city block 2544 and bounded east by the wharf. These two bills for 1877 are made out as being received from Martha J. Sweringen; John N. Herder, agent. For 1878 there are again two bills of the same City Book 22, bill 2289, and the other bill, City Book 22, bill 2288. Bill 2288 contains property in city block 660 east, 660 west, and 660, and the other one, 2289, contains only block 2544, bounded east by the wharf. They are both made out as being received from Martha J. Sweringen. Their- appears still another bill for 1878, containing a large amount of other property, but not containing the boundary of any of this property in 660, 660 E., 660 ", or 2544. It does contain property in block 308 east, the original property, and that is made out against Martha J. Sweringen; John M. Harder, agent.

Then comes the tax bill for 1879, City Book 22, bill 2222, against Martha J. Sweringen; Farrar & Co., agents. They appear for the first time; that is 1879. That contains the property in city block 2544, bounded east by the wharf and boundary of property in block 308 E., 660, 660 E., and 660 W., city bill for 1880, City Book 22, bill 2223, against Martha J. Sweringen; Farrar & Co., agents. That appears to include the property in city block 308 E., 660 W., 660 E., and 660 and city block 2544, last described as being bounded east by the wharf.

The taxes for 1881, City Book 22, bill 2248, against Martha J. Sweringen; Farrar & Co., agents. It seems to include all the
440 property mentioned and block 2544, being bounded east by the wharf.

Then taxes for 1882, City *Block* 22, bill 2348, Martha J. Sweringen; Farrar & Co., agents. That appears to include the entire property, and among them is city block 2544, bounded east by the wharf.

Then, in 1883, there are two bills, one being City Book 22, bill 2580, and the other City Book 22, bill 2583*a*. The first includes a large amount of property, apparently all west of *of* block 2544, but does not include city block 2544. The separate bill 2583 A contains only a description of property in city block 2544, bounded east by the wharf.

Taxes for 1884, City Book 22, bill 2497, against Martha J. Sweringen; Farrar & Co., agents. It seems to include all of the property she paid on, and among it being block 2544, bounded east by the wharf.

Taxes for 1885, City Book 27, bill 1507. There is another bill for 1885, Book 27, bill 1508. In bill 1507 there does not appear to be any of the property, except block 308 east. In bill 1508 there ap-

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pears to include the property in blocks 660, 660 E., and 660 W. and block 2544, bounded east by the wharf.

Bill for 1886, City Book 27, bill 1485, against Martha J. Sweringen; Farrar & Co., agents. It seems to include all of these several blocks, including block 2544, bounded on the east by the wharf.

For 1887, City Book 27, bill 1519 and bill 1518. Bill 1518, against Martha J. Sweringen—Farrar & Co., agents—seems to include none of the property in that region. Bill 1519 includes 308 east, 660, 660 E., 660 W., and block 2544, being bounded east by the wharf.

For 1888, City Book 27, bill 1459 seems to include all property mentioned, and is against Martha J. Sweringen, and block 2544 is bounded east by the wharf.

441 For 1889, City Book 27, bill 1595, against Martha J. Sweringen; Farrar & Co., agents. That appears to include all of the property, and among them being block 2544, bounded east by the wharf.

The 1890, City *Block* 27, bill 1602, against Martha J. Sweringen; Farrar & Co., agents. That seems to be the entire bill for their taxes, and includes city block 2544, bounded east by the wharf.

For 1891, City Book 30, bill 1677, against Martha J. Sweringen; Farrar & Co., agents. That appears to be a bill for all the property, includiug block 2544, bounded east by the wharf.

For 1892, City Book 30, bill 1648, against Martha J. Sweringen; Farrar & Co., agents. This seems to be a complete bill, including — 2544, bounded east by the wharf.

There is no bill for 1893 among those presented.

For 1894, City Book 30, bill 1728. That seems to be a complete bill in itself, including block 2544, bounded east by the wharf, against Martha J. Sweringen; Farrar & Co., agents.

1895. That seems to be complete bill, but there have been changes made, and, amongst them, that *is* in city block 2544, bounded east by the wharf, has a red line through it.

Mr. ALLEN: I understand from counsel that we are to be permitted to inspect and handle these tax bills for any information we desire any time in connection with the argument of the case.

Mr. BELL: That is the understanding.

Mr. ALLEN: And the fact that they have not introduced these bills makes the books in the assessor's office competent to show the same state of facts.

Mr. DRABELLE: For 1871, 1872, 1873, and 1874.

No further evidence offered by defendants.

In Rebuttal.

Dr. W. M. MCPHEETERS, being duly sworn on behalf of plaintiff, testified as follows:

442 Direct examination by Mr. LEVERETT BELL:

Q. What is your name?

A. W. M. McPheeters.

Q. Will you look at this agreement purported to be between Silas Bent and Wm. M. McPheeters, dated April 3rd, 1873, and state whether or not that is your signature.

A. Yes; that is my signature.

Q. State whether or not you had any authority at the time it is purported to be signed to *sing* the name on this paper—any written authority or otherwise.

Mr. ROBERT: We object to the question. It purports to be a title to the land, and a verbal authority could not be given for that purpose.

Mr. BELL: I am asking whether he had authority to represent those parties in executing these papers—if he had any written authority.

A. I was administrator of the Buchanan estate.

Q. How is that?

A. I was administrator of the Buchanan estate and Mr. Bent represented the Tyler estate.

Mr. ROBERT: The only question is whether he had any written authority.

WITNESS: I cannot say I had any written authority.

Mr. BELL: This was made at the time when you were administrator?

A. Yes, sir.

Q. Did you have control of the property at the time?

A. Yes, sir.

Q. Your wife is one of the Buchanans, and the other two are her sisters?

A. There were other heirs I did not represent.

Q. They did not own property along that line, did they?

A. I do not recollect about that.

WITNESS: The cause of this agreement was this——

Mr. ROBERT: There is no question put to the witness and we object.

COURT: Objection sustained.

443 —. Dr., were you authorized by the parties named to make the agreement?

A. I considered myself so.

COURT: Did you have a written authority from these parties?

A. No further than being administrator of the estate.

Q. Administrator or executor?

A. I was executor.

COURT: No further authority than executor of the estate?

A. Yes, sir.

Mr. JOHNSON: Your honor will recollect in reading the will that they had charge, and the testamentary papers showed Dr. McPheeters, as executor, had entire control of the Buchanan estate.

Mr. BELL: We propose to show by the Doctor that these parties were advised as to what they did.

Q. With reference to your acting, signing, for these parties, did they know of it after or before the act, and what action did they take?

Mr. ROBERT: They lived here, but Mrs. Scott did not.

—. Mrs. Scott must have been in writing.
A. She knew I was going to fix the boundary.

Mr. ROBERT: We object to that.
Objection overruled; to which ruling defendants duly excepted at the time.

Q. Were you authorized to make an agreement with reference to boundary?
A. Really I do not recollect whether there was any specific directions by letter or not.

Mr. ROBERT: We object to further testimony.

COURT: Was there anything said about the agreement after it was made?
A. Yes, sir.

COURT: If this agreement does not represent all the Buchanan heirs, it is not competent.

Q. What occurred between you and the parties mentioned after you executed the agreement? What occurred between you and them after the execution of the agreement in regard to this boundary?

444 A. They were informed of it.
Q. State whether they concurred.

Mr. ROBERT: That is a leading question.
COURT: Objection sustained.

Mr. BELL:

Q. Go on, Doctor. You said they were informed.

Mr. ROBERT: I move that answer be stricken out.

Q. If he knows they were informed, give the remainder of the conversation or notified—whatever it was—or the different ones.

Mr. ROBERT: We object to the question as incompetent and irrelevant.

A. I can say this: they have subsequently recognized it.

Mr. ROBERT: We object to the answer.
COURT: Objection sustained.

Q. How did they recognize it?
A. They recognized the boundary.

Mr. ROBERT: We object to the question and answer.
COURT: Objection sustained.

Q. What act have they done or committed?
A. Mrs. Crosby has——

Mr. ROBERT: If there was any sale of land, it must be in writing.
COURT: Objection sustained.

Q. What has been the occupation of the property since this agreement, Doctor, as to this land?

Mr. ROBERT: We object to that question.

Q. State what has been done up there.
A. I think the land has been recognized by the parties—that is, Mrs. Scott and Mrs. Crosby.

Mr. ROBERT: We object to that and move it be stricken out.
COURT: Objection sustained.

Q. Who claims south of the land, Doctor?

Mr. ROBERT: We object to that question as a conclusion.

445 Q. Dr., how has the property south of the land been held?
A. By the Tyler estate.

Mr. ROBERT: We object to that also and move it be stricken out.

COURT: Who has been—state, Dr., if you know, who has been occupying the property south of the line?
A. I do not; Mr. Liebke may have occupied some of it with old logs.
Q. If the court will let him, state the circumstances which lead to the forming of this agreement.

Mr. ALLEN: We object to the circumstances which lead to this agreement.
COURT: I do not think that would be competent.

Cross-examination of witness waived.

Mr. FARRAR was recalled to the stand in rebuttal.

Direct examination by LEVERETT BELL, Esq.:

Q. Mr. Farrar, you were on the witness stand the other day?
A. Yes, sir.
Q. You testified that you had been the agent of plaintiff in this case in regard to the property up there?
A. Yes, sir.
Q. This property in block 308 east, extending eastwardly, since about 1875; I believe you said that?

Mr. ALLEN: We object to that.
Objection overruled; to which defendants duly excepted at the time.

A. I did.
Q. Is that correct?

We object. Objection overruled; to which ruling defendants duly excepted at the time.

A. Yes, sir.

Q. Who paid the taxes on this property; who paid these particular bills that have been produced here this morning?

We object to the question. They show on their face.

446 COURT: Objection overruled.

To which ruling of the court the defendants then and there excepted.

A. I did.
Q. Where were those tax bills kept after payment?
A. I kept them.
Q. Do you know the plaintiff in the case?
A. Yes, sir.
Q. Do you know about her physical condition?

Mr. ROBERT: We object to that question as immaterial.

Mr. JOHNSON: We simply propose to show Mrs. Sweringen is a very old woman and she never attended to any business herself.

COURT: Objection sustained.

Q. I will ask you just one question in regard to what improvements were on these lots 33, 34, and 35, block 306 east.

COURT: My recollection is that was shown.

Mr. JOHNSON: He wants to correct testimony what he said about this.

COURT: If you desire to make a statement you may do so.

A. There was a small shanty on those lots.
Q. How long had it been there?
A. For a long time.
Q. What do you call a long time? Just point out as nearly as you can where this house is that you speak of on plat # 1.
A. I should say about here (indicating a spot in block 308 E.).
Q. How far east of the west line of lots 33, 34, and 35?
A. 50 or 75 feet I should say from memory.
Q. It has been there how long?
A. A long time.
Q. What do you call a long time?
A. It appears to have been there for years. It was an old trap.
Q. When did you first notice it?
A. In 1874 or 1875.
Q. When you first noticed it?

A. Yes, sir; some place around that time.

447 Q. Did you rent that out for the plaintiff?

Mr. ALLEN: We object to the question as leading.

Objection overruled; to which ruling defendants duly excepted at the time.

A. Yes, sir.
Q. How long did you collect rent from there?
A. It was vacant a large part of the time; from time to time.

Cross-examination by CHARLES CLAFLIN ALLEN, Esq.:

—. You first knew of the house on block 308 E. in 1875, or subsequent to that time?

A. Yes, sir.

Q. Was it not prior to that time—1875?

A. No.

Q. Mr. Farrar, are those bills you hold in your hand all tax bills ever paid by Mrs. Sweringen or for Mrs. Sweringen since you had charge of the matter?

A. No.

Q. What bills are there that are nor there?

A. That is hard to answer.

Q. Where are the others?

A. In various places. Mr. Barrett has most of them.

Q. Since 1875?

A. Yes, sir.

Mr. ROBERT: We would like to have you produce them.

Mr. BELL: We have produced all.

Q. Are there any bills covering this property in city block 308, or anywhere east of block 308, between that and the river?

A. I cannot answer except by checking up the books.

This is all the evidence in the case.

Mr. ALLEN: I ask to offer one instruction in both cases—a general instruction that on the evidence under the pleadings and facts the verdicts must be for the defendants. I make this before the argument, so it may be considered before the court.

Wherefore each of the defendants offered an instruction in each of said cases to which such defendant was a party; which instruction was in the following form, to wit:

448 The court declares the law to be that under the pleadings and evidence in this cause the verdict must be for the defendants.

Which instructions the court refused; to which action of the court the defendants then and there duly excepted at the time.

Whereupon the plaintiff prayed the court to give the following instructions or declarations of law:

Instructions Asked for by Plaintiff in Cases Nos. 99865 *and* 99866.

The court declares the law to be that *under* the conveyances read in evidence by plaintiff vested the legal title to lots numbers thirty-three, thirty-four, and thirty-five, described in a portion of said conveyances, in the trustees of Martha J. Sweringen and constituted the owners thereof riparian proprietors. The court further declares the law to be, that any addition made to the land described in the deeds read in evidence by plaintiff to Martha J. Sweringen's trustees by gradual or imperceptible deposits from the Mississippi river, is to be taken and considered, as the same formed, as a portion of the land

described in said deeds, notwithstanding the fact that such addition of land may have been aided or caused by a dike or dikes built in said river by the city of St. Louis.

The court declares the law to be that the deed from the city to Martha J. Sweringen, offered in evidence, does not estop plaintiff from maintaining this action if she can otherwise maintain it. The court further declares the law to be that although plaintiff may have known that a railroad was being built across the premises sued for and failed to object to or protest against the building of the same, that such failure did not deprive her of any right she may otherwise have had to maintain this action.

The court further declares the law to be that the acts and conducts of the respective parties hereto are insufficient to establish an estoppel *in pais* against the plaintiff or to deprive her of any right she may otherwise have had to maintain this action.

449 The court further declares the law to be that although plaintiff may have failed to pay taxes for a number of years on the premises sued for, that such failure did not deprive her of any right she may otherwise have had to maintain this action.

The court further declares the law to be that in order to find that the owner of any part of the premises sued for dedicated the same for the purpose of a wharf or street by matter *in pais*, the proof that the owner intended and consented to make such dedication should be so full and persuasive as to leave no reasonable doubt of such intent and consent, and the acts of such owner relied on to establish such intent and consent must be irreconcilable with any construction except such intent and consent.

The court further declares the law to be that the evidence is insufficient to show that any portion of the premises sued for *were* dedicated for wharf or street.

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The court declares the law to be that under the pleadings and evidence the plaintiff is entitled to judgment for the possession of the following-described premises, situated in the city of St. Louis and State of Missouri and bounded as follows: on the east by the Mississippi river, on the west by a line coincident with the alleged western boundary of the wharf as set forth in ordinance 5403, which line is 90 feet and 9¼ inches in length along northwardly with said alleged wharf line and commences at a point 60 feet and 6¼ inches north of the intersection of the north line of Dock street with said alleged wharf line; on the south by a line parallel to the north line of Dock street produced to the river and 60 feet and 6¼ inches

450 north of the same, and on the north by a line parallel to the south line and 90 feet therefrom; and the plaintiff is also entitled to judgment against the City of St. Louis for $5,000 damages for the detention of said property during the five years pre-

ceding the date of this judgment, and the plaintiff is also entitled to have the value of the monthly rents and profits, established at $100.

Which instruction the court gave; to the giving of which instructions on behalf of the plaintiff the defendants then and there duly excepted.

Thereafter, to wit, on the 2nd day of December, 1896, the court found the issues (in the two cases) in favor of the plaintiff and against the defendant-, and entered the following verdicts of finding and judgment in said cause- respectively, to wit: Cause No. 99865, Martha J. Sweringen *vs.* The City of St. Louis and Justin E. Joy, and cause No. 99866, Martha J. Sweringen *vs.* The St. Louis, Keokuk and Northwestern Railroad Co., to wit:

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vs.
CITY OF ST. LOUIS and JUSTIN E. JOY. } (99865.)

Now, at this day, this cause coming on to be heard, and a jury being waived and the cause submitted to the court on the pleadings and evidence and arguments of counsel for the respective parties, the court thereupon finds the issues in favor of the plaintiff, and doth order, adjudge, and decree that the plaintiff recover of defendants the possession of the following-described premises in the city of St. Louis, Missouri, bounded on the east by the Mississippi river, on the west by a line coincident with the alleged western boundary of the wharf, as set forth in ordinance 5403, which line is
90 feet and 9¼ inches in length along northwardly with said
451 alleged wharf line and commences at a point 60 feet and 6¼ inches north of the intersection of the north line of Dock street with said alleged wharf line, on the south by a line parallel to the north line of Dock street produced to the river and 60 feet and 6¼ inches north of the same, and on the north by a line parallel to the south line and 90 feet therefrom, and that said plaintiff also and further recover damages of the defendant The City of St. Louis in the sum of five thousand dollars for the detention of said property during the five years preceding the date of this judgment and the value of the monthly rents and profits of said property, which is found and established to be the sum of one hundred dollars, and that plaintiff recover her costs in the premises and have execution for the same and the above amounts and a writ of possession for the property.

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vs.
ST. LOUIS, KEOKUK AND NORTHWESTERN RAILROAD CO. } (99866.)

Now, at this day, this cause coming on to be heard, and a jury being waived and the cause submitted to the court on the pleadings and evidence and arguments of counsel for the respective parties, the court thereupon finds the issues in favor of the plaintiff, and doth order, adjudge, and decree that the plaintiff recover of defendant the possession of the following premises in the city of St. Louis,

Missouri: bounded on the west by a line 11 feet east of and parallel with the western line of an alleged wharf, as set forth in ordinance 5403, on the east by a line 40 feet east of and parallel with the western boundary, on the south by a line 60 feet and 6¼ inches north of and parallel with the north line of Dock street produced to the river, and on the north by a line 90 feet *with* of and parallel with the south boundary, together with her costs and charges
452 herein expended, and have execution therefor, and also a writ of possession for the property herein described.

To which judgment and finding of the court the defendant then and there duly excepted at the time.

And thereafter, on the 3rd day of December, 1896, and within four days after the rendering of said verdict and finding and the entry of said judgment, the defendant, The City of St. Louis filed its motion to set aside the verdict and for a new trial, which was as follows:

In the Circuit Court, City of St. Louis, State of Missouri, Room —.

MARTHA J. SWERINGEN, Plaintiff,
vs.
THE CITY OF ST. LOUIS ET AL., Defendants. } No. 99865.

Now comes the defendant The City of St. Louis and moves the court to set aside the verdict and judgment heretofore rendered in said cause and grant a new trial therein for the following reasons:

1. The verdict and judgment are against the evidence and against the weight of evidence and against the law under the evidence.

2. The verdict and judgment *was* for the wrong party.

3. The court erred in admitting incompetent, irrelevant, and immaterial evidence offered by plaintiff and against the objection of this defendant.

4. The court erred in rejecting competent, relevant, and material evidence offered by this defendant.

5th. The court erred in refusing to give this defendant's instruction in the nature of a demurrer to the evidence at the close of plaintiff's case.

6. The court erred in refusing to give this defendant's instruction at the close of the entire case, that on the evidence adduced the plaintiff could not recover.

7. The court erred in giving illegal and improper instruc-
453 tions at the instance of plaintiff.

8. The court erred in refusing legal and proper instructions asked by this defendant.

9. The court erred in giving improper instructions of its own motion.

10. The verdict and judgment are excessive.

11. There was no evidence to support the verdict and judgment.

W. C. MARSHALL,
CHAS. CLAFLIN ALLEN,
Attorneys for said Defendant.

And on said 3rd day of December, 1896, and within four days after the rendering of said verdict and judgment, the defendant, Justin E. Joy, filed his motion for a new trial, which was as follows:

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Comes now the def't Justin E. Joy and moves the court to set aside the judgment rendered herein and for a new trial for the following reasons:

Because the finding and judgment of the court is against the law and the evidence; because the court erred in admitting irrelevant and incompetent testimony and in excluding relevant and competent testimony; because the court wrongly declared the law and refused to declare it aright.

H. M. POLLARD,
Att'y for Def't Joy.

And on the 4th day of December, 1896, and within four days after the entry of said verdict and judgment, the defendant The St. Louis, Keokuk and Northwestern Railroad Co. filed its motion for a new trial as follows:

454 In the Circuit Court of the City of St. Louis, State of Missouri.

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vs.
ST. LOUIS, KEOKUK AND NORTHWESTERN RAILROAD COMPANY.

Now comes the defendant and moves the court to set aside the verdict and grant a new trial herein for the following reasons:

1. That the court admitted, against the objection of the defendant, improper and illegal testimony offered by the plaintiff.
2. That the court rejected, against the objection of the defendant, legal and proper testimony offered by the defendant.
3. The court, sitting as a jury, gave improper and illegal instructions.
4. That the court, sitting as a jury, refused to give proper and legal instructions offered by the defendant.
5. That the verdict is against the evidence.
6. That the verdict is against the law.
7. That the verdict is against the law and the evidence and against the law under the evidence.
8. That the verdict is against the weight of evidence.
8½. That the court erred in refusing to give this defendant's instruction at the close of plaintiff's case, and also erred in not giving said instruction at the close of the entire case.
9. That the court, sitting as a jury, erred in not finding on the pleadings and the evidence submitted thereon for the defendant and not entering judgment for the defendant.

10. That under the law and the evidence the verdict and judgment of the court should have been for the defendant.

E. S. ROBERT AND
JNO. H. DRABELLE,
Att'ys for Defendant.

455 All of which said motions the court continued till the December term, 1896, of said court; and on the 10th day of December, 1896, the court overruled the motions for new trials of the defendants, The City of St. Louis and Justin E. Joy, in cause No. 99865; to which ruling and order of the court the defendants then and there duly excepted at the time.

And thereafter and on the 19th day of December, 1896, the plaintiff and the defendant, The St. Louis, Keokuk and Northwestern Railroad Co., filed the following stipulation in cause No. 99866, to wit:

In the Circuit Court, City of St. Louis, State of Missouri.

MARTHA J. SWERINGEN, Plaintiff,
vs.
THE ST. LOUIS, KEOKUK AND NORTHWESTERN RAILROAD COMPANY, Defendant.

Now comes the parties to the above-entitled cause, by their respective attorneys, and stipulate and agree as follows:

First. That in case the City of St. Louis fails to appeal or, having appealed, fails to prosecute the appeal in the case of Martha J. Sweringen against said city and Justin E. Joy, being No. 99865, division No. 6, of the circuit court of the city of St. Louis, then the motion for new trial in this cause shall be overruled by the then judge of the division of said court in which said cause shall then be pending, to the end that defendant may proceed by appeal or otherwise.

Second. In case said city takes an appeal in said case and prosecutes the same, the said motion for new trial in this case shall be taken off the docket and remain undisposed of until the determination of such appeal by the supreme court, and in case said supreme court reverse and remands said case against said city, then
456 the motion for new trial in this cause shall be sustained by the court and a new trial be granted. In case said supreme court affirms on the merits the judgment of the court in said case against the said city, then the said motion for new trial in this case shall be by the court overruled and final judgment be entered against the defendant for the possession of the property described in the finding of the court, and no appeal therefrom shall be allowed the defendant.

J. H. DRABELLE,
E. S. ROBERT,
Attorneys for Defendant.
E. P. JOHNSON,
LEVERETTE BELL,
Attorneys for Plaintiff.

And that the above matters and things, rulings and exceptions, may be made a part of the record, defendants tender this their bill of exceptions and pray that the same may be signed and sealed as such, which is accordingly done this — day of December, A. D. 1896.

JOHN M. WOOD, [SEAL.]
Judge of said Circuit Court, City of St. Louis, Missouri, in Room No. 6.

And which affidavit and bound for appeal are respectively in words and figures as follows, to wit:

STATE OF MISSOURI, }
City of St. Louis. }

Affidavit for an Appeal.

In the Circuit Court, City of St. Louis, December Term, 1896.

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457 STATE OF MISSOURI, } *ss:*
City of St. Louis, }

Chas. Claflin Allen, one of the attorneys of record for defendant The City of St. Louis in the above-entitled cause, being duly sworn, makes oath and says that he is the agent of the City of St. Louis for the purpose of taking this appeal, and that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

CHAS. CLAFLIN ALLEN.

Subscribed and sworn to before me this 29th day of December, A. D. 1896.

T. B. RODGERS, *Clerk.*

Know all men by these presents that the City of St. Louis, as principal, is held and firmly bound unto Martha J. Sweringen in the sum of fifteen thousand dollars ($15,000.00); for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at St. Louis this twenty-eighth day of December, A. D. 1896.

The condition of the above obligation is such that whereas the city of St. Louis has appealed from the judgment rendered against it and in favor of Martha J. Sweringen in the circuit court, city of St. Louis, for the possession of certain premises in said judgment described and the sum of five thousand dollars damages and $100.00 monthly rents and profits, together with costs:

Now, if said appellant shall prosecute its appeal with due dili-

gence to a decision in the appellate court and shall perform such judgment as shall be given by such court or such as the appellate court may direct the circuit court, city of St. Louis, to give,
458 and if the judgment of said circuit court or any part thereof be affirmed and said appellant shall comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be awarded against it by any appellate court, then this obligation to be void; otherwise to remain in full force and effect.

Approved in open court this 29th day of December, 1896.

THE CITY OF ST. LOUIS, [SEAL.]
By C. P. WALBRIDGE, *Mayor*. [SEAL.]

Attest: THOS. B. RODGERS, *Clerk*.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Thomas B. Rodgers, clerk of the circuit court, city of St. Louis, within and for the city and State aforesaid, do hereby certify that the above and foregoing contains a full, true, and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remain on file and of record in my office.

In testimony whereof I have hereto set my hand and
[SEAL.] affixed the seal of said court this 20th day of August, 1897.

THOS. B. RODGERS, *Clerk*.

And afterwards, to wit, on the 14th day of January, 1899, the following proceedings were had in said cause, viz:

MARTHA J. SWERINGEN, Resp., }
vs. }
ST. LOUIS, App. }

Come now the said parties, by attorneys, and after argument herein, submit this cause to the court.

And afterwards, to wit, on the 15th day of June, 1899, the further following proceedings were had in said cause, viz:

459 MARTHA J. SWERINGEN, Respondent, } Appeal from Circuit Court, City of St. Louis.
vs.
THE CITY OF ST. LOUIS ET AL., Defendants; The City of St. Louis, Appellant. }

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid by the circuit court of the city of St. Louis rendered, be reversed, annulled, and for naught held and esteemed, and that the said appellant be restored to all things which it has lost by reason of the said judgment. It is further

considered and adjudged by the court that the said appellant recover against the said respondent its costs and charges herein expended, and have therefor execution.

(Opinion filed.)

Which said opinion is in words and figures as follows, to wit:

In the Supreme Court of Missouri, Division No. 2, April Term, 1899.

MARTHA J. SWERINGEN, Respondent,
vs.
THE CITY OF ST. LOUIS ET AL., Appellant.

This is an action of ejectment for the following land in the city of St. Louis:

Beginning at a point in the southern line of Buchanan street at the northeast corner of city block No. 2544 of said city, thence southwardly along the eastern line of said block to the southeast corner thereof, thence westwardly along the southern line of said block 150 feet to the southeast corner of city block No. 660 east of said city, thence southwardly to the northeast corner of city block No. 661 east of said city, thence southwardly along the eastern
460 line of said last-named block to the southeast corner of the same in the northern line of Branch street, thence eastwardly along the northern line of Branch street extended to the Mississippi river, to said river, thence northwardly along said river to the southern line of said Buchanan street to said river, and thence westwardly along the southern line of said Buchanan street extended to said river, to the point of beginning.

Ouster was laid as of April 9th, 1891.

As a matter of fact, the land which plaintiff seeks to recover is a part of the North wharf of the city of St. Louis, beginning sixty feet north of Dock street and extending ninety feet wide between parallel lines from the western line of the said wharf eastwardly to the Mississippi river.

The plaintiff claims title to the above tract as an accretion to land patented by the United States to Louis Labeaume and his heirs in confirmation of a Spanish concession to William Christy. There *was* various defences interposed by the city.

The first is predicated upon the fact that inasmuch as the plaintiff has absolutely no sort of paper title to the specific land sued for, but must recover, if at all, upon a showing that this land is an accretion formed by the Mississippi river to her title acquired by mesne conveyances from Louis Labeaume, it is an indispensable prerequisite that she show that Labeaume himself was a riparian owned.

The patent to Louis Lebeaume from the United States is dated March 25th, 1852, and recites a confirmation of survey No. 3333, containing 33.68 acres, and contains a plat which accompanies this opinion, on which the Labeaume survey is indicated within certain pink lines.

So much of the description of the property included in said survey as indicates the eastern lines of said survey nearest the Mississippi river is as follows:

461 "Beginning at a stake set on the right bank of the Mississippi river between high and low water mark and on the extension line produced eastwardly from Labeaume's southern ditch, the lower and most eastern corner of this survey and the upper and most northern corner of the survey of Joseph Brazeau, numbered three thousand three hundred and thirty-two. * * *

(The description then goes inland to the west and north along the line marked in pink on the plat until it reaches a point in the old bed of Rocky branch); * * * thence north 87 degrees and thirty minutes east, at five chains and forty-six links a point at the mouth of the Rocky branch, the northeastern corner of this survey and a corner to the city of St. Louis, it being the northern termination of the northwestern boundary line thereof. From this corner, which is marked F on the plat, the northwest corner of Second or Main street and Dock street bears south thirty-seven degrees fifteen minutes west, distant seven chains and seventy-one links, and the point of intersection of the aforesaid city line with the southern edge of Dock street bears south twenty-two degrees west, distant six chains and sixty-one links, which point of intersection is two chains and eight links north, sixty-nine degrees east from the southwest corner of Dock street and Second or Main street. From the corner F down the right bank of the Mississippi river, with the meanders thereof, between high and low water mark, south nine degrees east, at eight chains and sixty-six links a stake; thence south twenty-one degrees east at five chains and fifty links a point, from which offset north seventy degrees east one chain and eighty-three links to the center of the water of the Rocky branch as running through the sand beach six chains and sixty-three links to the bluff of the sand beach seven chains and forty-seven links to the water's edge of the Mississippi river; return to the meandering line; at ten chains a post, from

462 which the southeast corner of a stable bears south forty-two degrees west, distant forty-six links, and the upper point of the entrance of the water of the Rocky branch into the Mississippi river bears south sixty-two degrees and thirty minutes east, distant sixteen chains; thence south thirty-four degrees east, at seven chains 5 links the eastern extension of Labeaume's northern ditch, from which the corner marked D on the plat bears north seventy-four degrees and thirty minutes east, distant nineteen chains and seventy-five links; at twenty-five chains a stake; thence south twenty-three degrees east, at thirteen chains and sixty-seven links the northeast corner of Robertson and Patterson's saw-mill, at fourteen chains and 8 links the southeast corner of said mill, at twenty chains and fifty-seven links the southeast corner of Hendrick's flour mill, nineteen links to the right; at twenty-three chains and thirty-five links the northeast corner of Cochran's saw-mill, thirty chains and 95 links to the beginning corner."

To the introduction of this patent defendant objected, because on its face and by the plat attached to it and made a part of it the prop-

erty thereby conveyed did not extend to the Mississippi river, but only to a well-defined and permanent boundary which began at a fixed stake "between high and low water mark" and continued with the meanders of the river "between high and low water mark" from the mouth of Rocky branch on the north to the point of beginning on the Braceau survey.

This objection was overruled, and defendant duly excepted.

It is fundamental in the law of accretions that the lands to which they attach must be bounded by the river or stream to entitle its owner to such increase.

The doctrine is one of compensation. The reason of the law is that every owner of land bounded by a stream of water is subject by reason — the gradual changing of the course thereof to lose a
463 portion of his land or have the same increased in quantity by the accumulation thereto, and inasmuch as he is wholly without remedy if a loss occurs, eating away his banks, he is entitled to whatever increase also that is caused by the gradual accretion or reliction.

In the very nature of things, then, accretions depend upon actual contiguity. Any separation of the claimant's land from the accumulated alluvion by the lands of another, however narrow the intervening strip may be or whatever the size of the claimant's tract behind it. 1 Amer. & Eng. Enc. of Law (2 ed.), 473, note 2 and cases cited; Gould on Waters, sec. 155, note 1; Ellinger *vs.* Mo. Pac., 112 Mo., 204; Smith *vs.* St. Louis, 21 Mo., 36.

Now, in the patent to Lebeaume the river is not mentioned as a boundary. On the contrary, the eastern boundary is a permanent line, fixed by course and *siatnces*, metes and monuments, "between high and low water mark," and the accompanying survey exhibits a tract of fourteen acres or more between the eastern boundary of the survey and the river itself.

To the east of the pink line, which borders the survey of 1852, lies a larger "sand beach," which separates the river from the Labeaumes survey.

We are unable to agree with counsel for plaintiff that the plat to the patent carries the north line of the survey by a dotted line across the said beach. On the contrary, we think it is plain that this dotted line from the point "F" marks the then northern limits of the city and not of this survey. The plats and the language of the surveys alike brings us to this conclusion. It follows that the effort to bring this case within the doctrine of Shelton *vs.* Maupin, 16 Mo., 126, must fail, because there is no evidence that the lines of this survey ever run to the river.

464 Whatever may have been the original Spanish concession, the survey and patent made under the confirmation in 1852 must control as to the extent of Labeaume's right. Smith *vs.* St. Louis, 21 Mo., 36.

A great number of cases decided by this court are cited by the plaintiff to sustain her claim that the call for the eastern boundary constitutes the grantees in the Labeaume patent riparian owners. Lebean *vs.* Garen, 37 Mo., 556; Perkins *vs.* Adams, 132 Mo., 131;

Tatum *vs.* St. Louis, 125 Mo., 647; Crandall *vs.* Allen, 118 Mo., 403; Naylor *vs.* Cox, 114 Mo., 232, and others.

A very cursory reading will demonstrate that in each of these cases the river itself was a boundary line, and no other lands intervened between the river and the riparian claim. A case strikingly in point is Dunlap *vs.* Stetson, 4 Mason (C. C.), 349, decided by Judge Story.

The contest in the case grew out of the description of the deed of Budge to McGlathry. The description was as follows: "A certain lot of land lying and being in Bangor, on Condeskeig point, so called, bounded and described as follows, to wit: Beginning at a stake on the west bank of Penobscot river, near a thorn bush marked on four sides, running north eleven rods to a stake and stones, thence southerly to a stake and stones, a corner; thence south nine rods to a stake and stones on the bank of the same river, thence running on the western bank to high-water mark sixteen rods to the first-mentioned bounds, with all the privileges of water and landing to the same belonging.'"

The colonial act of Maine, 1641, gave the proprietor of lands in all coves, creeks, about and upon salt water propriety to the low-water mark "where the sea doth not ebb above one hundred yards and not more where it ebbs further."

The question was whether McGlathry by the foregoing de-
465 scription took as riparian owner the flats in front of the land described in the deed or whether he was limited to high-water mark on the western bank of the Penobscot. The court held he did not take, as a riparian owner, the lands in his front, saying: "It is to be observed that it is not a deed bounding the grantee on the river or the stream of the river generally, where the flats might pass by implication, but the boundaries are specific and definite."

There, *is* in this case, the front line was restricted to the definite surveyed line, not to the river itself.

Here it is the specific line between high and low water mark, and cannot be extended to the large area then and now existing between that line and the river itself.

So, in Cook *vs.* McClure, 58 N. Y., 437, the court of appeals conceded, for argument sake, that where a boundary line was the bank of a pond the doctrine of accretion would apply, yet where the line, instead of being the pond itself, was a line "commencing at a stake near the high-water mark of the pond and running thence along the high-water mark to the upper end of the pond," it was held such a line was a fixed and permanent one and did not change as the water rose or receded, and consequently was not entitled to accretions.

But we need go no further than our own decisions.

In the case of Smith *vs.* St. Louis Public Schools, 30 Mo., 290, this whole question was thoroughly examined and discussed in the light of Spanish and French law, and it was held that the doctrine of accretion was inapplicable to what are termed limited fields—that is, such as have a definite boundary line other than the river—and in that case it was held that where a street was dedicated to the

public between the lot and the river the right of accretion did not attach to the lot, and the street fixed the boundary of the lot. That case has since been uniformly followed by this court. Ellinger vs. Railroad, 112 Mo.

466 The tract in this case was confirmed not only by fixed boundaries other that the river, but the exact number of acres was specified within that survey, and that survey, as to its quantity, excludes all idea that the United States was granting the fourteen or more acres lying outside of that survey at the time it was made.

The surveyor, moreover, says that Soulard's survey did not describe the meanders of the Mississippi or of Rocky branch, and it was impossible to determine whether the difference in area was the result of miscalculation by Soulard or by the accretions; but, whatever the cause of the discrepancy, the United States confirmed the last survey, which nowhere calls for the river as a boundary; and by that patent all these questions must be held to be forever settled.

Our conclusion is that, as Labeaume was not a riparian owner, his heirs or grantees cannot recover the tract in suit as an accretion.

The court therefore erred in admitting the patent as any evidence of title to the land in suit, as it did not purport to convey it to Labeaume.

Plaintiff, then, having no paper title to the land in suit, is remitted to an actual, continuous adverse possession of the tract as her basis for recovery. She has no color of title by which her possession of a part can extend to the whole.

What evidence, then, is there in the record of such possession as would ripen into a title? By the form of her action she admits the possession of defendant, and the defendant in possession may rest upon that possession until plaintiff exhibits a better title. Plaintiff must recover upon the strength of her own title and not upon the insufficiency of the defendant's.

467 Plaintiff has shown no continuous, if any, possession of the property in suit. There is not a pretense that the same was ever enclosed by a fence, or that plaintiff had any buildings or permanent structure of any kind or character on this particular land.

There is no proof of any actual ownership or claim thereof in the record.

On the contrary, the proof appears quite conclusive that she recognized the city's right to a wharf. The plat which she introduced to show the mutual agreement between Mrs. Tyler, by Silas Bent, on one side, and Sallie McPheeters, Mary B. Scott, and Julia Crosby, by W. M. McPheeters, shows, among other things, that in 1873 the 90 feet herein sued for *was* designated on the plat as an extension of lots 33, 34, and 35, and the prolongation brought it to another tract marked "wharf," and there it terminated. This tract was marked Mrs. Martha T. Sweringen.

On the trial plaintiff's counsel distinctly announced they would

be bound by this map or plat. In a word, twenty-two years before the commencement of this action it appears this land was a part of a public wharf, and none of the persons who had that property surveyed were making any claim to the land in dispute in this action. Another significant fact is this: Kennett, now Hall, street was opened by condemnation proceedings in 1870. This street is east of plaintiff's original lots. The property east and west of Kennett street, which is within the extended side lines of plaintiff's original lots, was platted and treated as the property of the Tyler and Buchanan heirs, and Liebke and Schrage were made parties to the proceedings—lessees of the Buchanan heirs. Damages were assessed in favor of the Tylers and Buchanan. Plaintiff Mrs. Sweringen was made a party to that suit, and benefits were assessed against her lots in block 308 E. to pay the assessment to the Tylers and Buchanans, and they were sold to — and afterwards, in 1879, plaintiff — her lots from the city.

468 Notwithstanding all this property was platted as belonging to others and that she was served with process, she permitted those proceedings to go without objection. Neither plaintiff or her agents made the slightest claim of ownership of this tract at that time.

The tax receipts disclose that since 1874 the plaintiff did not pay on the land sued for. She did return her property west of the wharf line, in block 2544, but the receipts do not corroborate the oral testimony that she paid on the tract in suit, but most clearly disprove it.

Her receipts show the land on which she paid was bounded on the east by the wharf, and neither the plaintiff or her agents objected to such a description.

So much for the negative aspect of her adverse possession.

The affirmative proof was as follows:

J. V. S. Barrett, a grandson of plaintiff, testified in connection with a plat prepared by Joyce that in 1868 or 1869, when about eight years old, he went with his grandfather Sweringen and Capt. Silas Bent to the tract in suit to have it surveyed. He testified that Mrs. Sweringen had a house on her lots west of this tract. Squatters had shanties on it up to December, 1890; plaintiff had absolutely no improvement of any kind on this particular property. It is true, he says, Mrs. Sweringen paid taxes to the river, but as her tax receipts produced on the demand of defendant shows that from 1874 to 1895, inclusive, she paid on no property east of city block 2544, he is obviously mistaken.

Mr. Chas. T. Farrar testified that he had charge of plaintiff's property from Second street to the river from 1875 to the trial, and paid her taxes. On several occasions he put some squatters off of the land east of city block 2544 since the railroad was built, and Mr. Joy had taken possession. Joyce testified he had surveyed

469 the ground marked on plat No. 2 at the request of plaintiff's attorneys, and this property was then designated on the plat as bounded by the wharf on the east. He had extended the green

lines down to the river three or four days before the trial at the request of plaintiff's attorneys.

Various tax receipts from 1857 to 1870 were introduced.

Taking the various descriptions, the width, and the depth, it would seem that prior to 1870 plaintiff did not pay taxes east of Main street. But, conceding the full force of this evidence as to the payment of taxes on this vacant land and the sporadic expulsions of squatters on the sand beach, it is settled law in this State that the payment of taxes of itself does not show possession of land or create title. Chapman *vs.* Templeton, 53 Mo., 463; Cashman *vs.* Cashman's Heirs, 123 Mo., 647.

Equally unavailing was the occasional disturbance of the squatters by Mr. Farrar.

It was ruled in Pharis *vs.* Jones, 122 Mo., 125, and 26 S. W., 1032, that payment of taxes, cutting timber thereon, and keeping off trespassers did not constitute possession.

It follows that plaintiff introduced no evidence to show possession or seizen of the tract sued — within ten years before the commencement of her action, and the circuit court erred in not so holding, as plaintiff had no paper title drawing to her the possession.

In view of this conclusion, we do not deem it necessary to enter upon a discussion of various other incidental questions which arose in the case.

In our opinion, there was no evidence to sustain the judgment of the court, and it is accordingly reversed.

Sherwood and Burgess, JJ., concur.

JAS. B. GANTT, *J.*

470 And afterwards, to wit, on the 24th day of June, 1899, the further following proceedings were had in said cause, viz:

M. J. SWERINGEN, Resp.,
vs.
CITY OF ST. LOUIS, App.

Come now the said respondents, by attorneys, and file their motions for rehearing herein.

Which said motion for rehearing is in words and figures as follows, to wit:

In the Supreme Court of Missouri, Division No. 2.

MARTHA J. SWERINGEN, Respondent,
vs.
CITY OF ST. LOUIS, Appellant. } No. 8524.

Motion for Rehearing.

Now comes the respondent herein and moves the court to grant her a rehearing in this cause, and for special reasons therefor alleges the following:

The court overlooked questions decisive of the case, duly sub-

mitted by counsel, the particulars of which are hereinafter fully set forth.

E. P. JOHNSON AND
THOS. O. RUSSELL,
Attorneys for Respondent.

First. The court overlooked the fact that by the patent to Lebeaume's legal representatives of U. S. survey No. 3333 the tract of about fourteen acres of ground is, by the specific words of the patent, located within said survey, granted as accretions to the Spanish concession by said patent, and the accretions so granted are bounded therein on the east by the Mississippi river in express' terms (and a statement is made that the accretions are rapidly
471 forming), instead of being located between said survey and said river, as stated in the opinion herein, as witness the following quotation from said patent, wherein the difference of excess of land contained in said survey No. 3333 and Soulard's survey of the Spanish concession is explained (Rec., p. 35):

"*Remarks.*

The survey of this tract, as made by A. Soulard in March, one thousand seven hundred and ninety-nine, and recorded in 'Register d'arpentage' one hundred and thirty, a copy of which is attached hereto, represents the area thereof to be three hundred and seventy-four arpens, there being twenty-five arpens and thirty-hundredths of an arpen, equal to twenty-one acres, and fifty-two-hundredths of an acre less than found by this survey, but as no notes of Soulard's survey describe the meanders of the Mississippi river and of the Rocky branch, the former bounding the tract on the east and the latter in part on the north, there are therefore no means to ascertain whether the difference or excess in the area of this survey over that given by Soulard is owing to a miscalculation by said Soulard or to the subsequent accretion along the bank of the Mississippi river since Soulard's operations. This accretion appears to be rapidly advancing; that portion of the tract eastward of the high bank, shown topographically on the foregoing plat, the top of which is designated by the dotted lines *a*, *b*, *c*, *d*, *e*, and *f*, appears to be the accretion since Soulard's times, and contains about fourteen acres."

Were it not stated in the foregoing that this tract of about 14 acres is a part of the twenty-one acres and fifty-two-hundredths of an acre of the excess of land contained in U. S. survey No. 3333 over the amount of land contained in Soulard's survey of the Spanish concessions, then a question might be raised on the words quoted as to whether the tract of about fourteen acres was not east
472 of the east line of U. S. survey No. 3333 (as stated in the opinion) and bounded (the 14 acres) on the east by the Mississippi river; but as this fourteen-acre tract is included in U. S. survey No. 3333 in express words, and in equally express words is bounded on the east by the Mississippi river, it necessarily follows

that U. S. survey No. 3333 is in like manner in express words bounded on the east by the Mississippi river.

Second. Again, the opinion on the second page of the typewritten copy correctly quotes from the field-notes of the survey at some length, a short quotation from which is sufficient for our purpose, as follows: "Reaches a point in the old bed of Rocky branch, * * * thence north 87 degrees and 30 minutes, at 5 chains and 46 links, a point at the mouth of the Rocky branch, the northeastern corner of this survey, and a corner to the city of St. Louis, it being the northern termination of the northwestern boundary line thereof." From the corner which is marked F on the plat, * * * "down the right bank of the Mississippi river, with the meanders thereof, between high — low water mark," giving courses and distances to the place of beginning.

The first point to which we call attention in connection with this quotation is that the court overlooked the meaning of the call of "a point (*f*) at the mouth of Rocky branch," for the reason that a call for a point at the mouth of Rocky branch necessarily carried the line to the river, as the branch could have no mouth until it reached the river. By the call in this quotation for the right bank of the river is meant the then existing bank next the water, as the old banks are referred to in the above-quoted remarks from the patent, and are delineated on the plat (Rec., p. 18) by the etchings, and which old banks are a considerable distance west of the east line of the survey and west of the fourteen-acre tract. These etchings show two old banks,
473 from north to south, for about half the width of the survey, where they join, and are stated in the remarks quoted to be "designated by the dotted lines (etchings) *a*, *b*, *c*, *d*, *e*, and *f*," but which letters are now illegible, the patent being very old and worn, having gone through the Maguire *v.* Tyler litigation, or the letters were omitted from the copy of the plat in the patent; and, further, by the whole of this call, "from the corner *f* down the right bank of the Mississippi river, with the meanders thereof, between high and low water mark," is meant as near low-water mark as the surveyor could conveniently run his line, and it is equivalent to any of the expressions "by," "with," "along," or "on" the river. This view is further enforced by the two or three very fine lines, broken at short intervals, and drawn immediately east of the east line of the survey on the plat and which represent the then line of the water of the river. Such lines are termed "water waves" by civil engineers. These lines show that there was not and could not be any land between the east line of the survey and the river; but this is not all, as the sand beach is marked on the plat, in plain words, "Mississippi river," and an arrow is marked on this sand beach, showing the course of the water over it—but even these are not all. Taking up the plat (Rec., p. 18) and placing a rule on it along the dotted line across the sand beach on the north, and we find that the dotted line is drawn in the exact direction of the last line in the plat that reaches point F, and the former line would be an extension of the

latter line in a direct course, except that the former line seems to have been drawn from a point on the south side or bank of the branch and the latter line from a point on the north side or bank of the branch. Recurring now to the quotation from the opinion, for convenience, the call reaching point *f* is "north 87 degrees and 30 minutes, at 5 chains and 46 links." This call of north 87 degrees and 30 minutes makes the last call in the patent run at an
474 angle 2½ degrees north of east, and the dotted line over the beach runs in the same direction, and therefore at an angle of 2½ degrees north of east, and cannot be the north boundary line of the city, as stated in the opinion, as the latter line runs due east. This dotted line is not necessary to show that the plat extends to the river, and is merely cumulative evidence to that effect.

The call for the Mississippi river as a boundary on the east of the survey, as called for in the remarks in the patent, would "control courses, distances, the designated quantity, or the corners, monuments, and meander lines of the survey," if there were any such discrepancies in this survey; but there are no such discrepancies in it, and when a patent "shows a river to be one of the boundaries of the tract, it is a legal deduction that there is no vacant land left for appropriation between the river and the river boundary of such tract."

Sec. 194, Gould on Waters.

The call in the patent "down the right bank of the Mississippi river, with the meanders thereof, between high and low water mark," we contend, is equivalent to a call "by," "with," "along," or "on" the river, and as there are no other terms limiting the former call, it carried the survey to the river, and this would be true if point "*f*," at the mouth of Rocky branch, from which the call starts, were simply a call for a monument on the bank, instead of being, as it is, a point east of all banks, and certainly a long way east of two banks, as shown by the etchings on the plat, which are referred to and located in the patent.

Sec. 197, Gould on Waters.

The plat of the survey went to the river, as we think we have demonstrated, and that gave riparian rights.

Shelton *vs.* Maupin, 16 Mo., 124.

Bates *vs.* Illi's Cent. R'd, 66 U. S., 204.

475 The importance of the ruling herein asked to be reviewed does not fully appear at first glance from this case, notwithstanding the fact that it does plainly appear herein that the title to four blocks of ground, Nos. 2544, 660 E., 660, 660 W., and a portion of block No. 308 E. lying west of the premises sued for (plat 1, Rec., p. 164) will be invalidated by it. But this is a mere drop in the bucket compared with the millions of dollars worth of (mostly improved) private property lying south of the above-named blocks, the titles to all of which depend upon the question of riparian rights decided herein and will be invalidated by it, and we therefore ask

the indulgence of the court for this lengthy and minute presentation of these facts.

Respectfully submitted.

E. P. JOHNSON AND
THOS. A. RUSSELL,
Att'ys for Resp.

In the Supreme Court of Missouri, Division No. 2.

MARTHA J. SWERINGEN, Respondent,
vs.
CITY OF ST. LOUIS, Appellant. } No. 8524.

To the above-named appellant:

Take notice that the respondent herein will file a motion for a rehearing of this cause, of which the foregoing is a copy.

E. P. JOHNSON AND
THOS. A. RUSSELL,
Attorneys for Respondent.

And afterwards, to wit, on the 3rd day of July, 1899, the further following proceedings were had in said cause, viz:

476 MARTHA J. SWERINGEN, Resp.,
vs.
ST. LOUIS, App.

Now, at this day, the court having fully considered and understood the motions, heretofore filed, for rehearings herein, doth order that said motions be, and the same are hereby, denied.

And afterwards, to wit, on the 3rd day of October, 1900, the further following proceedings were had in said cause, viz:

MARTHA J. SWERINGEN, Respondent,
vs.
CITY OF ST. LOUIS ET AL., Appellants.

Now, at this day, there is presented to Hon. James B. Gantt, chief justice of the supreme court of the State of Missouri, in chambers, a writ of error to the Supreme Court of the United States and a citation, directed to said appellants, citing and admonishing them to appear at a Supreme Court of the United States on the 2nd day of November, 1900; which said writ of error is allowed and said citation signed.

And afterwards, to wit, on the 22nd day of October, 1900, the further following proceedings were had in said cause, viz:

MARTHA J. SWERINGEN, Respondent,
vs.
CITY OF ST. LOUIS ET AL., Appellants.

Now, at this day, there is presented to the Honorable James B. Gantt, chief justice of the supreme court of Missouri, in chambers,

an assignment of errors and a bond in the sum of three thousand dollars; which said assignment of errors is filed and said bond approved, ordered filed, and made a part of the record herein.

Which said assignment of errors is in words and figures as follows, viz:

477 Supreme Court of the United States, October Term, 1900.

MARTHA J. SWERINGEN, Plaintiff in Error,
vs.
THE CITY OF ST. LOUIS and JUSTIN E. JOY, Defendants; THE City of St. Louis, Defendant in Error.

Comes now Martha J. Sweringen, plaintiff in error, by her counsel, and respectfully represents that she feels herself to be aggrieved by the proceedings and judgment of the supreme court of the State of Missouri in the above-entitled cause, and assigns error thereto as follows:

1. The court erred in said cause in deciding that the court below erred in admitting the patent to Louis Labeaume or his legal representatives in evidence as any evidence of title to the land in suit in said cause.

2. The court erred in said cause in construing the United States patent to Louis Labeaume and in deciding that the patent to Louis Labeaume or his legal representatives did not purport to convey the land in suit in said cause.

3. The court erred in said cause in deciding that said Louis Labeaume was not a riparian owner, and that his heirs or grantees could not recover the tract of land in suit as an accretion in said cause.

4. The court erred in said cause in deciding that the plaintiff in error had no paper title to the land in suit in said cause.

5. The court erred in said cause in deciding that the court below erred in overruling the objections of defendants to the patent to Louis Labeaume or his legal representatives as irrelevant and immaterial and not tending to support the issue in said cause and not showing the plaintiff was a riparian owner and admitting
478 said patent in evidence in said cause.

6. The court erred in said cause in deciding that there was no evidence to sustain the judgment of the court below in said cause.

7. The court erred in said cause in reversing the judgment of the court below in said cause.

8. The court erred in said cause in rendering judgment in favor of the defendants in said cause.

Wherefore the said plaintiff in error prays the honorable court to examine and correct the errors assigned and for a reversal of the judgment of the supreme court of the State of Missouri entered in the above-entitled cause, and for an affirmance of the judgment of

the court below, the circuit court of the city of St. Louis, Missouri, in said cause.

MARTHA J. SWERINGEN,
By E. P. JOHNSON AND
THOS. A. RUSSELL AND
G. A. FINKELNBURG,
Her Attorneys.

Which said bond is in words and figures as follows:

Know all men by these presents that we, Martha J. Sweringen, S. Harper Barret, and Thomas A. Russell, are held and firmly bound unto the City of St. Louis in the full and just sum of three thousand dollars, to be paid to the said City of St. Louis, its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of October, in the year of our Lord one thousand nine hundred.

Whereas lately, at the April term, A. D. 1889, of the supreme court of the State of Missouri, in a suit depending in said court between Martha J. Sweringen, plaintiff and respondent, and The City of St. Louis and Justin E. Joy, defendants, and the said City of St. Louis, appellant, a judgment was rendered against the said Martha J. Sweringen, and the said Martha J. Sweringen has obtained a writ of error of the Supreme Court of the United States to said court to reverse the judgment in the aforesaid suit and a citation, directed to the said City of St. Louis, citing and admonishing said City of
479 St. Louis to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said Martha J. Sweringen shall prosecute said writ of error to effect and answer all costs if she fail to make good her plea, then the above obligation to be void; else to remain in full force and virtue.

MARTHA J. SWERINGEN. [SEAL.]
S. HARPER BARRET. [SEAL.]
THOS. A. RUSSELL. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved by—
JAS. B. GANTT,
Judge and Chief Justice of the Supreme Court of the State of Missouri.

STATE OF MISSOURI, *sct:*

I, Jno. R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the record and proceedings in the case of Martha J. Swer-

ingen *vs.* The City of St. Louis as fully and complete as the same appears on file and of record in my said office

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court.

Seal of the Supreme Court of Missouri.

Done at office, in the city of Jefferson, this 24th day of October, A. D. 1900.

JNO. R. GREEN, *Clerk.*

480 JEFFERSON CITY, MO., *Oct.* 1, 1900.

Mr. E. P. Johnson, St. Louis, Mo., to John R. Green, clerk supreme court, Dr.

To making transcript in case of Swearengen *vs.* St. Louis *et al*... 350.00

Rec'd payment of Thos. A. Russell, trustee, Oct. 2d, 1900.

JNO. R. GREEN, *Clerk.*

Endorsed on cover: File No., 17,955. Missouri supreme court. Term No., 470. Martha J. Sweringen, plaintiff in error, *vs.* The City of St. Louis. Filed October 31st, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1901.

MARTHA J. SWERINGEN,
Plaintiff in Error,
vs.
THE CITY OF ST. LOUIS,
Defendant in Error.

No. 187.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR ON MOTION TO DISMISS OR AFFIRM.

This is an action of ejectment to recover possession of alluvion, formed by accretions to the west bank of the Mississippi River, in the City of St. Louis, Missouri. The pleadings and judgment of the State Circuit Court are sufficiently set forth in defendant's statement.

The writ of error was issued in this case within two years after the judgment was rendered in the Supreme Court of Missouri, as required by Secs. 1003 and 1008, Rev. Stats. U. S.; Allen vs. Southern Pacific Railroad Co., 173 U. S., 479, 484.

There are two federal questions raised by the record in this case, both of which were decided adversely to the plaintiff in error. They are first, the construction placed on the patent from the United States to Louis Labeaume or his legal representatives, dated March 25, 1852, for the land embraced in a Spanish Concession and survey to him, and which was confirmed to him by what is commonly called the "Old Board of Commissioners"; and second, the construction placed on the Act of Congress approved June 6, 1874, the first section of which is as follows:

"That all of the right, title and interest of the United States in and to all the lands in the State of Missouri, which have at any time heretofore been confirmed to any person or persons by any act of Congress, or by any officer or officers, or Board or Boards of Commissioners, acting under and by authority of any act of Congress, shall be, and the same are hereby granted, released and relinquished by the United States, in fee simple, to the respective owners of the equitable titles thereto, and to their respective heirs and assigns forever, as fully and completely in every respect whatever, as could be done by patents issued therefor according to law;" 18 U. S. Stats. at Large, p. 62.

Plaintiff in error, on the trial of the cause in the State Circuit Court, read said patent, record, p. 14, in evidence, and a complete and unquestioned chain of

title, record, pp. 26, 28, 30, 76, 80 and 82, consisting of deeds from Louis Labeaume, down to her trustees, she then being a married woman, vesting the legal title in them for her use, of lots Nos. 33, 34 and 35, of City Block No. 308E, of the City of St. Louis, Missouri, as they existed in 1842, which lots were a portion of the land embraced in said Spanish Survey, confirmation and patent, and were bounded on the east by the Mississippi River, by said Spanish Survey and confirmation, and each of the deeds in said chain of title. The premises sued for are composed of alluvion, formed by accretions to said lots since the execution of said deeds. The husband of plaintiff in error died in the year 1872, and the statute of uses vested the legal title to said lots in her; Roberts vs. Mosely, 51 Mo., 282, 286; Baker vs. Nall, 59 Mo., 265, 268.

United States Survey No. 3333, for which said patent was issued, is stated therein to be a *retracing* of the lines of said Spanish Survey, and the eastern line of the former survey, to begin at and run from a point (or corner) at the mouth of the Rocky branch, "down the right bank of the Mississippi River, with the meanders thereof, between high and low-water mark," to the beginning corner, a point also between high and low-water mark. The course of this line changes four times, and it has six fixed points including the beginning and ending points. There is also a plat embraced in said patent, which plaintiff in error contended showed that there was no land between said east line of said Survey No. 3333 and said river, only a sand bar plainly marked "Mississippi River"; record, p. 14.

When plaintiff in error offered said patent in evidence, counsel for defendant in error objected as follows:

"Mr. Allen: We object to the patent as irrelevant and immaterial, and not tending to support the issues in this case and not showing plaintiff to be a riparian proprietor."

"Court: Objection overruled."

"To which ruling defendant excepted at the time;" record, p. 13.

Defendant again challenged the validity of said patent by reading in evidence a patent to Rufus Easton, dated May 1, 1826, for United States Survey No. 2042, claiming that it showed an outstanding title to the premises sued for; record, p. 275.

At the conclusion of said trial plaintiff in error asked, and the Court gave, the following instructions:

"The Court declares the law to be that the conveyances read in evidence by plaintiff vested the legal title to lots number thirty-three, thirty-four and thirty-five, described in a portion of said conveyances, in the trustees of Martha J. Sweringen, and constituted the owners thereof riparian proprietors.

"The Court further declares the law to be that any addition made to the land described in the deeds read in evidence by plaintiff to Martha J. Sweringen's trustees, by gradual or imperceptible deposits from the Mississippi River, is to be taken and considered, as formed, as a portion of the land described in said deeds" * * *; record, p. 283.

A verdict was rendered in favor of plaintiff in error, and judgment was entered thereon, for possession and damages. Defendant appealed to the Supreme Court of Missouri, which reversed said judgment and rendered

a judgment in favor of defendant in error, deciding that the land granted to Louis Lebeaume was not bounded on the east by the Mississippi River; that the Court below erred in overruling the objection of defendant to the introduction of said patent in evidence; that Lebeaume was not a riparian owner, and that, therefore, the plaintiff in error, as his grantee, could not recover the land in suit as an accretion. Further, that plaintiff in error having no color of title to the land sued for, her previous possession of the same was insufficient to enable her to recover possession of it.

These rulings constitute the substance of the errors assigned herein in various forms; record, pp. 1 and 302.

We shall first present the federal question raised on this record under said patent.

The construction placed upon said patent by said decision, is such as to impair the validity and efficiency claimed for it by plaintiff in error, in the Court below, and deprive her of her title to the premises sued for, claimed under it.

Said construction so placed upon said patent, confers on this Court jurisdiction to review said decision under Sec. 709, Rev. Stat. U. S.

In Gill vs. Oliver, 11 How. (52 U. S.), 529, 547, it is said:

"If neither the validity nor the construction of the patent or title under the treaty is contested, if both parties claim under it, and some question without or dehors the patent or the treaty, it is plainly no case for our interference under this section;" Blackburn vs. Portland Gold Mining Co., 175 U. S., 571, 586.

And in Packer vs. Bird, 137 U. S., 661, 669, the Court uses the following language:

"The Courts of the United States will construe the grants of the general government without reference to the rules of construction adopted by the States for their grants; but whatever incidents or rights attach to the ownership of property conveyed by the government will be determined by the States, subject to the condition that their rules do not impair the efficiency of the grants or the use and enjoyment of the property granted;" Shively vs. Bowlby, 152 U. S., 1, 9, 44; Hill vs. Hompton, 4 Sawyer, 195; Kenyon vs. Squire, 1 Wash., St., 9.

This doctrine has often been applied by this Court to the construction of patents bordering on streams or other waters, generally without question or comment in regard to its jurisdiction to do so, under said Sec. 709.

In Shively vs. Bowlby, 152 U. S., 1, 9-10, occurs the following:

"The ground against its validity (a U. S. patent) proceeded upon the ground that the grant from the United States upon which it was founded, passed no title or right as against subsequent deeds from the State, in lands below high water mark. This is a direct adjudication against the validity of a right claimed under a law of the United States, and presents a federal question within the jurisdiction of this Court. Rev. Stat., 709. That jurisdiction has been repeatedly exercised, without objection or doubt, in similar cases of writs of error to State Courts;" Packer vs. Bird, 137 U. S., 661, 669; Knight vs. U. S. Land Ass., 142 U. S., 161, 176; Grand Rapids & Indiana Rd. Co. vs. Butler, 159 U. S., 87, 92; County of St. Clair vs. Lovingston, 23 Wall. (90 U. S.), 46, 63; Barney vs.

Keokuk, 94 U. S., 324, 336; Railroad Co. vs. Schurmeier, 7 Wall. (74 U. S.), 272, 284. And see also Hill vs. Hompton, 4 Sawyer, 195; Kenyon vs. Squire, 1 Wash., 9; Jefferis vs. East Omaha Land Co., 134 U. S., 178, 189; Hardin vs. Jordan, 140 U. S., 371, 380; Mitchell vs. Smale, Id., 406, 410.

The alluvion formed by accretions to said patent, or the grant by said act of Congress, became a portion of the land granted as fast as it was formed and was vested thereby in said Labeaume or his legal representatives.

In New Orleans vs. United States, 10 Pet. (35 U. S.), 662, 717, the Court said:

"The question is well settled at common law, that the person whose land is bounded by a stream of water, which changes its course gradually by alluvial formations, shall still hold the same boundary, including the accumulated soil;" Jefferis vs. East Omaha Land Co., 134 U. S., 178, 189-196; Schools vs. Risley, 10 Wall. (77 U. S.), 91, 110; County of St. Clair vs. Lovingston, 23 Wall. (90 U. S.), 46,68; Jones vs. Johnston, 18 How. (59 U. S.), 150, 155; Jones vs. Soulard, 24 How. (65 U. S.), 41, 63; Banks vs. Ogden, 2 Wall. (69 U.S.), 57, 67; St. Louis vs. Rutz, 138 U. S., 226, 241, 245; Saulet vs. Shepherd, 4 Wall. (71 U. S.), 502, 508; Nebraska vs. Iowa, 143 U. S., 359, 360; Campbell vs. Laclede Gas Light Co., 84 Mo., 352, 372; Benne vs. Miller, 149 Mo., 228, 238; Gorton vs. Rice, 153 Mo., 676, 683; McBaine vs. Johnson, 155 Mo.,191, 200; Land Co. vs. Thompson, 157 Mo., 647, 654.

This is irrespective of the question as to whether the grant carries title to high or low water mark. Com-

menting on this proposition in Shively vs. Bowlby, 152 U. S., 1, 35, the Court said:

"The rule, everywhere admitted, that where the land encroaches upon the water by gradual and imperceptible degrees, the accretion or alluvion belongs to the owner of the land, is equally applicable to lands bounding on tide waters or on fresh waters, and to the King or State as private persons; and is independent of the law governing the title in the soil covered by the water;" Handly vs. Anthony, 5 Wheat. (18 U. S.), 374, 380; Jefferis vs. East Omaha Land Co., 134 U. S., 178, 189-193; Nebraska vs. Iowa, 143 U. S., 359, 360; County of St. Clair vs. Lovingston, 23 Wall. (90 U. S.), 46, 68; Barney vs. Keokuk, 94 U. S., 324; Meyers vs. St. Louis, 8 Mo., App., 266, 272; Cooley vs. Golden, 117 Mo., 33, 48.

In the construction of a patent the construction of the Act of Congress under which it was issued is drawn directly in question, and the same is true in the construction of all acts of public officers of the United States, under an Act of Congress.

The following is an extract from the opinion in Shoshone Mining Co. vs. Rutter, 177 U. S., 505, 511:

"It is settled that all questions of fact are determined by the land department, and that after the issue of a patent only questions of law are open for consideration in the courts, and as the laws of Congress alone determine the matter of the disposal of the public lands, it follows that the questions of law which are thus open for consideration are those arising under Acts of Congress." And in Ross vs. Doe, 1 Pet. (26 U. S.), 655, 664, where plaintiff and defendant each claimed title under a U. S. patent (662, 663), the Court said:

"In this case the titles of both parties are derived under an Act of Congress; the construction of the statute is drawn directly in question; and the decision of the highest court of law of the State is against title and right of the party, specially set up in his defense under the statute. This case is not distinguishable from the case of Mathews vs. Zaine, 4 Cranch, 382, in which the jurisdiction of this Court was maintained;" Bawdlin vs. Stark, 107 U. S., 463, 464; Shively vs. Bowlby, 152 U. S., 1, 9; Hussman vs. Durham, 165 U. S., 144, 147; Pickering vs. Lomax, 145 U. S., 310, 313; Glasgow vs. Baker, 128 U. S., 560, 571; Wallace vs. Parker, 6 Pet. (31 U. S.), 680, 686; Neilson vs. Lagow, 7 How. (48 U. S.), 772, 775; Bell vs. Hearne, 19 How. (60 U. S.), 252, 263; Cousins vs. Labatut, 19 How. (60 U. S.), 202, 207; Berthold vs. McDonald, 22 How. (63 U. S.), 334, 338; Little vs. Arkansas, 22 How. (63 U. S.), 193, 202; Maguire vs. Tyler, 1 Black (66 U. S.), 195, 202; Reichert vs. Felps, 6 Wall. (73 U. S.), 160, 165; Silver vs. Ladd, 6 Wall. (73 U. S.), 440.

This Court can review the judgment of a State Court only when the question was presented in the latter Court in accordance with the provisions of Sec. 709, Rev. Stats. U. S., and decided adversely to the claim so presented. There is no particular time or form in which this must be done, nor need it be stated in words that it is a federal question. If the intent to present the federal question clearly appears from the record, or by necessary intendment therefrom, although it may not have been stated in terms in the record or opinion of the State Court, it is sufficient, and the same is true if the question was necessarily raised on its record, without directly referring to it in any manner.

In Crowell vs. Randell, 10 Pet. (35 U. S.), 368, 398, the Court said:

"That it is not necessary that the question should appear on the record to have been raised, and the decision made in direct and positive terms, *ipsissimis verbis*, but that it is sufficient if it appears by clear and necessary intendment that the question must have been raised, and must have been decided, in order to have induced the judgment;" Hickie vs. Starke, 1 Pet. (26 U. S.), 94, 98; Murray vs. Charleston, 96 U. S., 432, 439-443; Chapman vs. Goodnow, 123 U. S., 540, 548; Des Moine Nav. & Rd. Co. vs. Iowa Homestead Co., 123 U. S., 552, 554; Kaukauna Co. vs. Green Bay & Canal Co., 142 U. S., 254, 269; Columbia Co. vs. Electric Co., 172 U. S., 475, 488; Keokuk & Hamilton Bridge Co. vs. Illinois, 175 U. S., 626, 633; Yazoo & Miss. V. Ry. Co. vs. Adams, 180 U. S., 1, 9, 14; Mallet vs. State, 181 U. S., 589, 592.

The federal question under said patent, as we have seen, arises upon the construction of a federal statute, and the authority exercised by a public official of the United States under it. It comes within the provisions of the first clause of said Sec. 709, and therefore need not have been "specially set up or claimed" in the State Court. The latter provision applies to the third clause only of said section, and in some rare cases not even to it; Columbia Co. vs. Electric Co., 172 U. S., 475, 487-489; Telluride Power Co. vs. Rio Grande Ry. Co., 175 U. S., 639, 643; Yazoo & Miss. V. Ry. Co. vs. Adams, 180 U. S., 1, 14.

This federal question was not only raised in this case, but also "specially set up" and "claimed" by plaintiff in error, on the trial in the State Circuit Court, by reading the patent to Louis Labeaume or his

legal representatives (which contains an express reference to the Act of Congress under which it was issued, stating its title and date of approval), in evidence against the objections made to its introduction, and a chain of title from him to her, and by asking instructions, which were given, declaring her to be a riparian proprietor and owner of any alluvion formed by accretions, to her land; record, p. 283; Ross vs. Doe, 1 Pet. (26 U. S.), 655, 662-664; Kissell vs. St. Louis Public Schools, 18 How. (59 U. S.), 19, 26-27; Berthold vs. McDonald, 22 How. (63 U. S.), 334, 338-339.

The opinion of the Supreme Court of Missouri in this case is a part of the record, made so by rule 8 of this Court, and by the Revised Statutes of Missouri, 1899, which statutes are as follows:

"Sec. 871. In each case determined by the Supreme Court or Court of Appeals, or finally disposed of upon a motion, the opinion of the Court shall be reduced to writing and filed in the cause, and shall show which of the judges delivered the same, and which concur therein or dissent therefrom."

* * * * * * * * *

"Sec. 873. The Clerk of the Supreme Court shall, when the opinion of the court is filed in his office, endorse thereon the day on which it is filed, and enter the same on his minutes." * * *

It appears from said opinion in this case, record, p. 291, that this federal question was raised in it, to-wit: That she claimed title to the premises sued for under the patent from the United States to Louis Labeaume or his legal representatives, and the decision was

against the validity of said patent in regard to said claim, and those statements alone confer on this Court jurisdiction to review the decision of the State Court; Cass Farm Co. vs. Detroit, 181 U. S., 396, 397; Loeb vs. Trustees of Columbia Township, 179 U. S., 472, 483; Water Power Co. vs. Street Ry. Co., 172 U. S., 475, 488; Eagan vs. Hart, 165 U. S., 188, 189; Gross vs. U. S. Mortgage Co., 108 U. S., 477, 484; Dibble vs. Billingham Bay Land Co., 163 U. S., 63, 69; Kreiger vs. Shelley Railroad Co., 125 U. S., 39, 44; Philadelphia Fire Ass. vs. New York, 119 U. S., 110, 116; United States vs. Taylor, 147 U. S., 695, 700.

The federal question under said Act of Congress is as follows:

The statements in the patent to Louis Labeaume or his legal representatives, establish a Spanish concession to him of the land to which the premises sued for are an accretion, in 1799, a survey of the same by Antoine Soulard, Surveyor of the Province, in the same year, a confirmation on September 22, 1810, by commissioners appointed for that purpose, commonly called the "Old Board of Commissioners," to said Louis Labeaume, agreeably to said concession, and that on June 14, 1811, they issued to him a patent certificate, numbered 982, for said confirmation, record, p. 14 (all done in pursuance of the provisions of the Treaty of Paris). The patent also contains a copy of said Soulard's survey, from which it is plainly obvious to the naked eye, that the latter survey and confirmation were bounded on the east by the Mississippi River, and it is so stated to be bounded in said patent. **It is further stated therein that accretions had formed to said Soulard's survey to the extent of about fourteen acres at the time U. S. Survey No. 3333 was**

executed, and that they were included in this latter survey and account in part at least for the excess of land in the latter over the former survey and that said accretions appeared to be rapidly advancing, record, p. 23.

Said confirmation vested the equitable title to the land confirmed, in said Labeaume, and it was final and binding on the United States; Strother vs. Lucas, 12 Pet. (37 U. S.), 410, 454; Les Bois vs. Brammel, 4 How. (45 U. S.), 449, 457, 463; Landes vs. Brandt, 10 How. (51 U. S.), 348, 370; Willot vs. Sandford, 19 How. (60 U. S.), 79, 80.

If said patent was defective and failed to convey said confirmation, or any part thereof, to said Labeaume or his legal representatives, then said Act of Congress of June 6, 1874, conveyed the same; Campbell vs. Laclede Gas Light Co., 119 U. S., 445, 446. And see also Ryan vs. Carter, 93 U. S., 78, 81.

Said opinion of the Supreme Court of Missouri denies to plaintiff in error any title to the land sued for, under said confirmation and Act of Congress of June 6, 1874, in the following language:

"Whatever may have been the original Spanish Concession, the survey and patent made under the confirmation, in 1852, must control as to the extent of Labeaume's right"; record, p. 293.

Said Act of Congress of June 6, 1874, is not mentioned or referred to in the record or opinion herein, but a federal question was necessarily raised under it, and was decided adversely to plaintiff in error, as the record showed that said Act of Congress was applicable to the case if said patent did not convey the premises sued for.

In Miller vs. Nichols, 4 Wheat. (17 U. S.), 311, 315; Mr. Chief Justice Marshall, speaking for the Court, said:

"It would not be required that the record should, in terms, state the misconstruction of an Act of Congress, or that an Act of Congress was drawn into question. It would have been sufficient to give this Court jurisdiction of this cause, that the record should show that an Act of Congress was applicable to the case"; Hickie vs. Starke, 1 Pet. (26 U. S.), 94, 98; Crowell vs. Randall, 10 Pet. (35 U. S.), 368, 394; Murray vs. Charleston, 96 U. S., 432, 442; Yazoo & Miss. V. Ry. Co. vs. Adams, 180, U. S. 1, 9-14.

Said patent states all of the facts required to make a perfect legal title in said Lebeaume, under said Act of Congress, to said confirmation, and said statements are legal evidence; Wright vs. Roseberry, 121 U.S., 488, 497-499; Langdeau vs. Hanes, 21 Wall. (88 U. S.), 521, 529.

Said opinion of the Supreme Court of Missouri, in this case, sums up the points on which the case is determined, as follows:

"It is fundamental in the law of accretions that the lands to which they attach must be bounded by the river or stream to entitle its owner to such increase.

* * * * * * * * *

"Now in the patent to Labeaume, the river is not mentioned as a boundary. On the contrary, the eastern boundary is a permanent line, fixed by courses and distances, metes and monuments, "Between high

and low water mark"; and the accompanying survey exhibits a tract of fourteen acres or more between the eastern boundary and the river itself.

* * * * * * * * *

"Whatever may have been the original Spanish concession, the survey and patent made under the confirmation, in 1852, must control as to the extent of Labeaume's right.

* * * * * * * * *

"Our conclusion is that as Labeaume was not a riparian owner, his heirs or grantees cannot recover the tract in suit as an accretion.

"The Court therefore erred in admitting the patent as any evidence of title to the land in suit, as it did not purport to convey it to Labeaume.

"Plaintiff, then, having no paper title to the land in suit, is remitted to an actual, continuous adverse possession of the tract as her basis of recovery. She has no color of title by which her possession of a part can extend to the whole."

The latter ruling results from the misconstruction of the patent as a necessary consequence, for if the patent vested in her riparian rights, she then had the legal title which carried with it the constructive possession.

The opinion then states facts bearing on such adverse possession, beginning with those considered as tending to negative the same by plaintiff (also contain-

ing misapprehensions of what the record shows), but instead of deciding the case on them, it shows specifically that no such decision was either made, or intended to have been made, by the concluding statement on the question on p. 296 of record, as follows:

"So much for the negative aspect of her adverse possession."

It then states the affirmative proof for plaintiff in regard to her actual possession of part of her lots, but not extending to or over the premises in controversy, and it then concludes:

"It follows that plaintiff introduced no evidence to show possession or siezin of the tract sued, *within* (should be, for) ten years before the commencement of her action, and the Circuit Court erred in not so holding, as plaintiff had no paper title drawing to her the possession.

"In view of this conclusion, we do not deem it necessary to enter into a discussion of various other incidental questions which arose in the case.

"In our opinion, there was no evidence to sustain the judgment of the Court, and it is accordingly reversed"; record, pp. 282-297.

The decision is exclusively on the legal proposition and no other, that the premises granted by the United States were not bounded on the east by the Mississippi River, so as to entitle either Louis Labeaume, or plaintiff, to alluvion formed to them, but, on the contrary, that the eastern line of them was permanent and fixed by courses and distances, metes and monuments, "between high and low water mark," with the survey ex-

hibiting a tract of fourteen acres or more between the eastern boundary and the river itself. The latter statement is assumed to be true in the opinion, in direct conflict with the statement in the "Remarks" in the patent, record, p. 23, that these 14 acres are a portion of U. S. Survey No. 3333, and aid in making its excess of 21.52 acres over the area of Soulard's survey.

A motion for a rehearing was filed in the case by the plaintiff, based on what she claimed to be a misconstruction of said patent, which the Court denied on July 3, 1899, record, pp. 297-301. Plaintiff's counsel did not state in specific words in said motion that there was a federal question in the case.

The foregoing shows conclusively that there were federal questions properly raised in the case, and that the judgment of the Court was on them regardless of other questions, and it denied to plaintiff in error her title claimed thereunder. This confers jurisdiction on this Court even if there were other questions in the case; Rector vs. Ashley, 6 Wall. (73 U. S.), 142, 147-149; Eustis vs. Bolles, 150 U. S., 361, 367; Johnson vs. Risk, 137 U. S., 300, 306; Dibble vs. Bellingham Bay Land Co., 163 U. S., 63, 69.

All of the other questions in the case were matters of fact, and the verdict on these questions is in favor of plaintiff in error, amply sustained by the evidence and is conclusive in her favor, as the Supreme Court of Missouri does not review such a verdict, and the case was therefore necessarily decided on the federal questions presented; Gibson vs. Chouteau, 8 Wall. (75 U. S.), 314, 318.

Counsel for defendant, in support of their contention that riparian rights are a matter of State law and

within the exclusive jurisdiction of the State Courts, cite the case of St. Louis vs. Meyers, 113 U. S., 566, and others, that pass upon the incidents that attach to grants of land made by the United States bordering on navigable streams and other waters, under State laws, in consequence of the ownership of property conveyed by the general government, but in which cases the validity or construction of the government grants to vest such incidents were not in question. These decisions have no bearing on the question under consideration, which is, does the patent to Louis Labeaume, or his legal representatives, or the Act of Congress of June 6, 1874, when properly construed, as claimed by plaintiff, bound the land granted by the Mississippi River and vest riparian rights in the grantees. The decision of the Supreme Court of Missouri in this case denied this claim of plaintiff, and this decision is a direct adjudication against the validity of a right claimed under a law of the United States and presents a federal question within the jurisdiction of this Court. It has been repeatedly held by this Court, generally without question or comment, that it has jurisdiction under writs of error to State Courts to construe such contested questions under such grants and determine whether they vested such incidents in the grantees, and carried title under State Laws, to high or low water mark or the center of the stream; Shively vs. Bowlby, 152 U. S., 1, 9-10; Grand Rapids and Ind. Rd. Co. vs. Butler, 159 U. S., 87; Packer vs. Bird, 137 U. S., 661; Barney vs. Keokuk, 94 U. S., 324; Knight vs. U. S. Land Assn., 142 U. S., 161, 176. The right to alluvion, while riparian, is not one of the incidents that attach to a government grant under State laws, but inheres in the grant. Such incidents are confined to rights and titles below high water mark; Anthony Falls

Water Power Co. vs. Water Commissioners, 168 U. S., 349, 365. "The sole question in Jones vs. Soulard was of the title, not in the bed or shore of the river, but in accretions which had become part of the fast land"; Shively vs. Bowlby, 152 U. S., 1, 35.

There is one matter of fact in this record that is so persistently put forward by the defendant, that we ask the indulgence of this Court while we present it as shown by the record herein.

For the purpose of locating said lots through the alluvion, plaintiff read in evidence an agreement of adjoining proprietors, establishing a division line through said alluvion. This division line had been accepted as the true line, and acquiesced in by all parties and the public authorities for over twenty years; testimony of Dr. W. M. McPheeters, record, p. 278, and Assessor's plats, pp. 272, 273. Said agreement is as follows:

"It is agreed between Silas Bent and Wm. M. McPheeters that their division line is to be at a point on the west line of Main street, 270 feet north of the north line of Dock street, and said line to run eastwardly parallel with the north line of Dock street to the Mississippi River. St. Louis, April 3, 1873. Mary L. Tyler, by Silas Bent, Sallie B. McPheeters and Mary B. Scott and Julia Crosby, by W. M. McPheeters."

Said agreement is endorsed on a private unrecorded plat, record, p. 10, attached to an abstract of title that was produced on the trial by witness, R. E. Collins, attorney for Mary L. Tyler, and it was retained by him, but he permitted it to be copied. It was not signed by plaintiff, nor any one under whom she claimed title, and it was not in her possession nor under her control.

When plaintiff's attorneys offered this paper (agreement and plat) in evidence, they were asked by Mr. Allen, counsel for defendant, in the midst of the examination of Mr. Collins, if they would undertake to be bound by it, and they replied, "We will concede that"; record, p. 10.

This agreement as to a division line endorsed on a private plat, specifically extends the line between the parties to the river, and as clearly asserts title and claim of ownership by them to the river, otherwise they would not have called for the river in the agreement, but would have stopped at the western wharf line on the plat and have called for the latter line. It disproves any intention of dedicating a wharf. Plaintiff was asserting a title to the river in this action when her counsel read it in evidence for the simple purpose of locating the premises sued for. The concession made in regard to it by counsel for plaintiff to counsel for defendant at that time is, that they conceded its legal effect, whatever that was. Their concession could have no other force as a matter of law, for neither a party nor his attorney can concede or admit away the law in his case; Crockett vs. Morrison, 11 Mo., 3, 5; State ex rel vs. Smith, 150 Mo., 75, 88.

During the pendency of this action plaintiff transferred her interest in it by deed to Arthur B. Barret (her grandson), S. Harper Barret (her granddaughter-in law), and Thomas A. Russell.

Said grantees continued the suit in her name under a statute of February 28, 1858; Laws Mo., 1858-9, p. 36, now embodied in Rev. Stats. Mo., 1899, Sec. 764, as follows:

"When an interest is transferred in any action pending, or hereafter to be brought, other than that occasioned by death, marriage or other disability of a party, the action shall be continued in the name of the original party, if the party to whom the transfer is made will indemnify the party in whose name the suit is to be continued against all costs and damages that may be occasioned thereby, or the court may allow the person to whom the transfer is made to be substituted in the action; and in all such cases the party to whom the transfer is made shall be required by the Court, upon application of the party who made the transfer, either to give such indemnity or to cause himself to be substituted in the action, and upon his omission to do so, the Court shall order the suit to be dismissed."

Instead of requiring her grantees to indemnify her against costs, or be substituted as plaintiffs, plaintiff executed the bond for them required to obtain the writ of error herein; record, p. 303. No one but plaintiff can complain of a failure to indemnify her; Cutter vs. Waddingham, 33 Mo., 269, 284; Spurlock vs. Sproule, 72 Mo., 503, 507; Smith vs. Phelps, 74 Mo., 598, 599; Asher vs. Railroad, 89 Mo., 116, 120; State vs. Philips, 98 Mo., 331, 340; Springfield vs. Weaver, 137 Mo., 650, 670.

Said Arthur B. Barret transferred his interest in the premises sued for, to his mother, Annie F. King, a daughter of plaintiff. Said Annie F. King, S. Harper Barret and Thomas A. Russell, after the decision of the present case by the Supreme Court of Missouri, on July 22, 1899, began an ejectment suit against the same defendants in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial

District of Missouri, alleging, in an amended petition, as the ground of jurisdiction, the proper construction of said patent contested by defendants, as a federal question arising under the laws of the United States.

The jurisdiction was sustained by the Court (but defendant omits the memorandum of the Court on this question, for which see King vs. City of St. Louis, 98 Fed. Rep., 641), a jury waived and the case tried, with two other cases, before the Court, and a verdict rendered for defendants.

The memorandum of the Court on the hearing shows that the questions in the case, to-wit: The boundary of the patent east by the river; the location of the premises as in the case at bar; and possession and seizen of the premises by plaintiffs and their grantors, were all decided in favor of the plaintiffs, and a verdict rendered against them on the sole ground of estoppel *in pais* consisting of what is held to have been a mere recognition of the premises as wharf. No steps were taken to procure a writ of error therefrom, but instead a writ of error was subsequently sued out in the case at bar.

The prosecution by the grantees of plaintiff of another action of ejectment for the premises in controversy resulting in a judgment for defendants is not a cause for dismissing this writ of error, and the only question that can arise under it when this case is heard on the merits is whether said judgment is *res adjudicata* and can be made available as an estoppel; Illinois Central Railroad Co. vs. Adams, 180 U. S., 28, 31; Huntington vs. Laidley, 176 U. S., 668, 679. A judgment in ejectment is not *res adjudicata* between the parties to it, there is no estoppel in one, and it is error

to admit such a judgment in evidence in another action between the same parties, on the same title, with the same defenses, for the possession of the same land. In Sutton vs. Dameron, 100 Mo., 141, 149, the opinion contains the following:

"The well-settled rule of law in this state, notwithstanding an improvident dictum in Foster vs. Evans, 51 Mo., 39, to the contrary, is, actions of ejectment, though between the same parties having the same defenses, concerning the same title and possession, and in all respects similar in their facts, may be maintained *ad infinitum*, so long as equitable defenses are not interposed and ruled upon, thereby converting the whole proceeding into an equitable one, and thus making the adjudication binding"; Whittaker vs. Whittaker, 157 Mo., 342, 353; Swope vs. Leffingwell, 119 Mo., 556, 564; Spencer vs. O'Neill, 100 Mo., 49, 58; St. Louis vs. Schulenberg & Boeckler Lumber Co., 98 Mo., 613, 616; Avery vs. Fitzgerald, 94 Mo., 207, 210; Ekey vs. Inge, 87 Mo., 493, 495; Kimmel vs. Benna, 70 Mo., 52, 62; Strother vs. Lucas, 12 Pet. (37 U. S.), 410, 434. The last is a Missouri case.

Respectfully submitted,

G. A. FINKELNBURG,

E. P. JOHNSON,

E. S. ROBERT,

Attorneys for Plaintiff in Error.

Supreme Court of the United States,

OCTOBER TERM, 1901.

MARTHA J. SWERINGEN,
Plaintiff in Error,
vs.
THE CITY OF ST. LOUIS,
Defendant in Error.
} No. 187.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR ON THE MERITS.

The petition herein was filed April 16, 1895, against the City of St. Louis and Justin E. Joy, and a summons was then issued and delivered to the sheriff and returned by him duly executed as to both of them. The petition is in the usual form in ejectment to recover possession of a portion of the north Wharf established by City Ordinance No. 5403, approved Aug. 6, 1864, but unopened, unused and unimproved as such. It describes the premises that lie east of two blocks that adjoin said established wharf line on the west, and between said line and the river. The description of so large a tract of land in

the petition was made for the purpose of certainly including whatever plaintiff owned through the alluvion formed to her original lots, and the controversy herein is confined to a strip of land 90 feet wide by about 350 or 360 feet long, extending from said Western line of said established wharf (which is also the Eastern line of City Block 2544), to the river. Said strip is a part of the alluvion formed to three lots, owned by plaintiff, each 30 feet wide, being Nos. 33, 34 and 35, on plat C. p. 74 of record, which lots then fronted on the river and were subsequently extended Eastwardly by accretions about 1800 feet to the present low water of the river, and they now run through City Blocks Nos. 308 E, 660 W, 660, 660 E and 2544, and said established wharf. They are shown as they now exist on plat No. 1, p. 96 of record, with a green border and marked Mrs. Martha J. Sweringen. The premises in controversy are crossed by a railroad track marked Chicago, Burlington and Quincy R. R., by what authority if any, does not appear.

Defendant Justin E. Joy, answered by general denial, and the answer of defendant City is a general denial and a plea of adverse possession by it of the premises sued for, for ten years previous to the commencement of the suit, and user as a public wharf by it for the same period with the acquiescence of plaintiff. Estoppel was not pleaded in the answer.

Plaintiff replied to the latter answer by a general denial; record, pp. 4-6.

A jury was waived and the case was tried before the Circuit Court for the City of St. Louis, beginning March 17, 1896; rec. p. 8.

The plaintiff offered in evidence a United States patent dated March 25, 1852, to Louis Labeaume or his legal representatives. Defendant objected to it as irrelevant and immaterial, not showing plaintiff was a riparian owner, which objection the court overruled and defendant duly excepted; Rec. p. 13.

Plaintiff read said patent in evidence, the material parts of which are as follows:

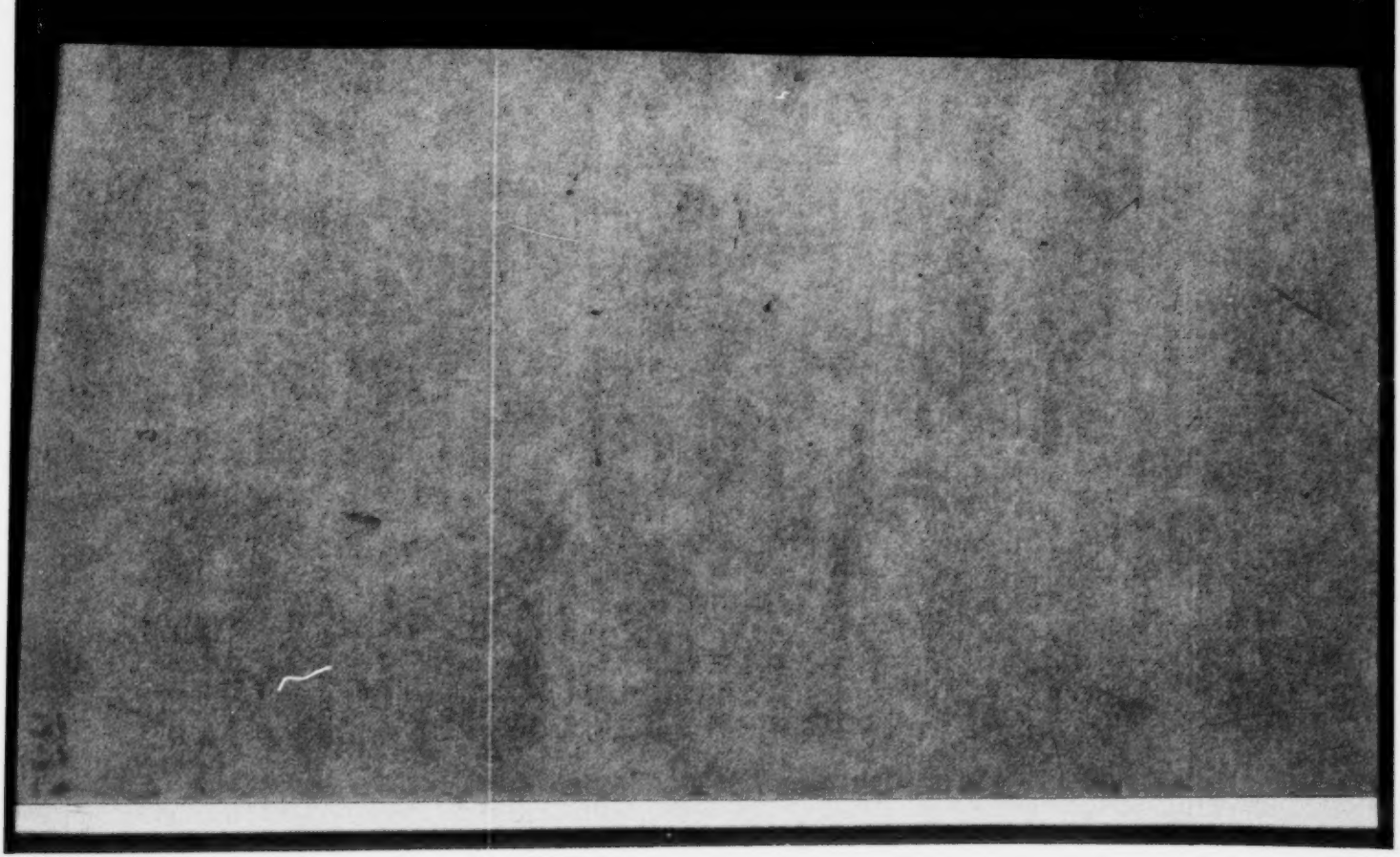
"The United States of America, To all to whom these presents shall come—Greeting:

Whereas, there has been deposited in the General Land Office a *Patent Certificate* number one thousand two hundred and forty-nine of the Recorder of Land Titles, at St. Louis, Missouri, whereby it appears that on the fifteenth day of February, one thousand seven hundred and ninety-nine, Zenon Trudeau, Lieutenant Governor of the Spanish province of Upper Louisiana, made a concession of about three hundred and sixty arpens of land to Louis Labeaume, and that on the second day of March, of the same year, it was surveyed by Antoine Soulard, Surveyor of the same province, to the amount of three hundred and seventy-four arpens, situated three miles north of the town of St. Louis; and that the Board of Commissioners, appointed in pursuance of the fifth Section of the Act of Congress, approved the second day of March, one thousand eight hundred and five, entitled "An Act for the ascertaining and adjusting the titles and claims to land, within the Territory of Orleans, and the District of Louisiana," confirmed on the twenty-second day of September, one thousand eight hundred and ten, three hundred and fifty-six arpens to Louis Labeaume, agreeably to the aforesaid concession, and that on the fourteenth day of June, one thousand eight hundred and eleven, they issued their certificate numbered nine hundred and eighty-two, for that confirmation, under the fourth Section of the Act of Congress, approved the third day of March, one thousand eight hundred and seven, entitled "An Act respecting claims to Land in the Territories of Orleans and Louisiana.

"And whereas, it further appears from the aforesaid Patent Certificate, that pursuant to the decision of the twenty-fifth day of July, one thousand eight hundred and fifty-one, of the Secretary of the Interior, those claiming under Labeaume are entitled to a Patent for the land according to Soulard's survey

and Labeaume's possession; and that the lines of the said Soulard's survey have been retraced, in conformity with the decision referred to, as appears from the Plat, and transcript of Survey, numbered three thousand three hundred and thirty-three, which accompany said Patent Certificate, the said Plat and Transcript Survey having been authenticated by M. Lewis Clark, Surveyor General for Illinois and Missouri, under date twenty-sixth of February, one thousand eight hundred and fifty-two; which said survey number three thousand three hundred and thirty-three contains three hundred and thirty-nine acres, and sixty-eight hundredths of an acre, being situated in Township forty-five north of the base line, of range seven east of the fifth principal meridian, in the State of Missouri, and which is platted and described as follows, to-wit:" record, p. 14.

The plat of said survey 3333, p. 14 of record, shows on its face that the survey contains 21.52 acres more than Soulard's survey contained. By the field-notes its line begins at the s. e. corner of the tract at point A, runs westerly to point B, northerly to point C, easterly to point D; then referring to old corner stone established by Antoine Soulard, found by Joseph C. Brown in 1817 and reestablished by him in 1833, northerly to point E in the old bed of the Rocky Branch, easterly down the old bed of the branch to a point in it, and from the latter, N. 87 degrees 30 minutes east at 5 Chs. and 46 Lks. to point F at the mouth of the Rocky Branch, the n. e. corner of the plat. (The letter F, on this plat, in the printed record, is scarcely legible, but it is plain on the plat in the record filed). Its eastern line is drawn southerly from the latter point and changes its course to vary with the river, four times on the way to point A, the beginning corner. Immediately east of the latter line are two fine lines broken at very short intervals, which indicate small banks made by the water, and east of them is a sand beach, terminating in a rocky beach on the south. This sand-beach is marked Mississippi river in large letters and there is an arrow on it pointed down stream.



East of the sand beach is a cross showing the points of the compass. At the n. e. corner of the plat, point F, there is a dotted line extended over the sand-beach for quite a distance across the river, and also dotted lines showing the former north-easterly and then southeasterly, course of the water from Rocky Branch running through the sand-beach. West of this eastern line on the plat, running southerly, are two etched or dotted lines, the first of which begins west of Second street as laid down on the plat, and the second as far west as Second street, both beginning on the north and running southerly, gradually approaching said eastern line until they intersect each other about two-thirds of the way down the line, there forming a single line which runs on in the same direction and west of said eastern line to the southern line of the plat. There is a pink border on the inside of the plat lines running all around with them. For convenience a blue-print copy of said plat is inserted herein.

The field-notes of the survey follow the plat on p. 15 of the record.

They "begin at a stake set on the *right bank of the Mississippi river between high and low-water mark*" and proceed around the survey as in the plat just described, to a point at the mouth of the Rocky Branch, the north-eastern corner of this survey, and a corner to the City of St. Louis, it being the northern termination of the northwestern boundary line thereof. (The north boundary line of the city is not mentioned.) From this corner, which is marked F, p. 22 of record, (omitting the lengthy and confusing witness calls for points and distances, for the sake of brevity and clearness), "down the *right bank of the Mississippi river, with the meanders thereof, between high and low-water mark*—south 9 degrees e. at 8 chs. and 66 links, a stake,—thence s. 20 degrees e.,—5 chs. and 50 links, a point,—at 10 chs. a post, thence s. 34 degrees e.—at 7 chs. 5 links, the eastern extension of Labeaume's northern ditch, at 25 chs. a stake,—thence s. 23 degrees e.—at 13 chs. and 67 links the northeast corner of Robertson and Patterson's

sawmill,—at 14 chs. and 8 links the southeast corner of said mill,—at 20 chs. and 57 links, the southeast corner of Hendrick's flourmill,—at 23 chs. and 35 links the northeast corner of Cockram's sawmill; 30 chs. and 95 links to the beginning corner."

A witness call to the second distance above which terminates at a "point," is as follows: point, "from which offset north 70 degrees east 1 ch. and 83 links to the center of the water of the Rocky Branch, as running through the sand-beach, —6 chs. and 63 links to the bluff of the sand-beach,—7 chs. and 47 links to the water's edge of the Mississippi river,—return to the meandering line."

On p. 23 of the record, the patent continues as follows:

"The foregoing description of the metes and bounds of said Survey number three thousand three hundred and thirty-three being accompanied, in the said Transcript of Survey, certified on the twenty-sixth day of February, one thousand eight hundred and fifty-two, by Surveyor-General Clark, by "Remarks," and "plat," and "Statement of the interferences," as follows, to wit:

"REMARKS.

"The survey of this tract as made by A. Soulard in March one thousand seven hundred and ninety-nine, and recorded in "Registre d'arpentage" page one hundred and thirty,—a copy of which is attached hereto, represents the area thereof to be three hundred and seventy-four arpens, there being twenty-five arpens and thirty hundredths of an arpen, equal to twenty-one acres, and fifty-two hundredths of an acre less than found by this survey; but as no notes of Soulard's survey describe the meanders of the Mississippi river, and of the Rocky branch, the former bounding the tract on the East, and the latter in part on the North, there are therefore no means to ascertain, whether the difference, or excess, in the area of this survey over that given by Soulard, is owing to a miscalculation

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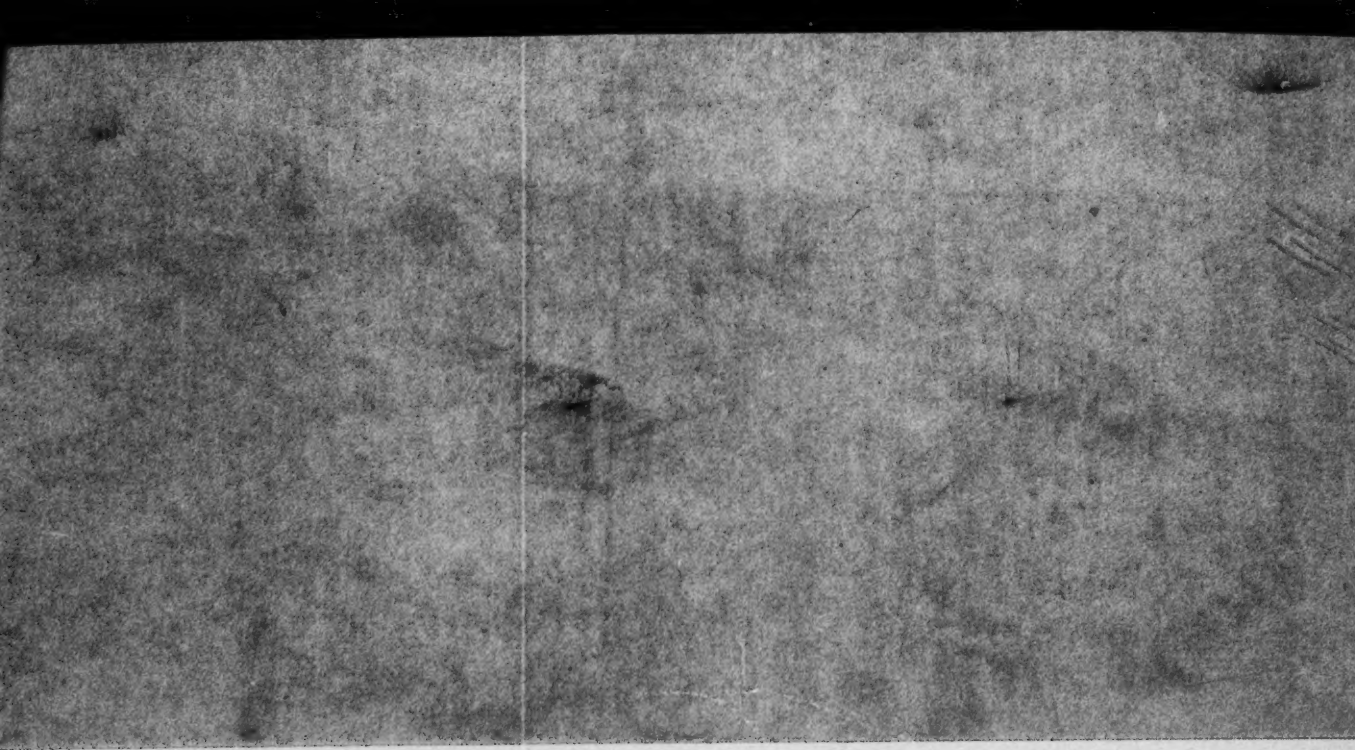

by said Soulard, or to the subsequent accretion along the bank of the Mississippi river, since Soulard's operations. This accretion appears to be rapidly advancing. That portion of the tract eastward of the high bank, shown topographically on the foregoing plat, the top of which is designated by the dotted lines "a-b-c-d-e and f" appears to be the accretion since Soulard's times, and contains about fourteen acres;" record p. 23.

The copyist omitted to mark the dotted or etched lines with the letters a, b, c, d, e and f, but the lines appear plainly on the plat.

Soulard's survey and plat, a blue-print copy of which is inserted herein for convenience, follow the remarks in the patent, on p. 23 of the record, and it is plain to be seen with the naked eye that the eastern boundary of Soulard's survey is the Mississippi river. Then follows a statement of interferences with survey No. 3333, but none of them with these lots, granting clause etc., on pp. 23-25 of record.

The same objection that was made when the patent was offered in evidence was also made, overruled and the ruling excepted to, as each deed in plaintiff's chain of title was offered.

Said Labeaume and wife conveyed said confirmed concession to William Chambers, by deed dated April 27, 1816, recorded July 3, 1816; record p. 26. William Chambers conveyed the undivided two thirds of same to William Christy and Thomas Wright, by deed dated May 4, 1816, recorded July 3, 1816; record p. 28. William Chambers and Thomas Wright and wife conveyed their undivided two thirds of out lots Nos. 1, 4 and 9 of same, as shown on plat, record p. 47, the latter bounded on the North and Northwest by the Rocky branch and East by the Mississippi River, to William Christy, by deed dated March 1, 1830, recorded May 31, 1836; record p. 30. William Christy died intestate, naming his heirs in his will, which was probated in 1837, disposing of a large portion of his property but not said lot 9, which descended to his heirs, except that the share of his grand-daughter, Mrs. Martha

J. Sweringen, plaintiff, as one of his heirs, was reduced one-half by his will; record, p. 35. In the case of Christy et al. vs. Sweringen *et al.*, commenced in 1839, William Christy's heirs partitioned said property and said lot 9 was ordered to be sold; record, pp. 38-69. The Sheriff subdivided said lot 9 into smaller ones (plat record p. 74) and sold them. William Chambers, father of Mary L. Tyler, purchased lots 30, 31 and 32, plaintiff lot 33, Robert Wash lots 34 and 35 and Harriet M. Dean lots 35 and 36, all fronting on the river, between Rocky Branch and Dock street; record, p. 73. The sheriff reported said sale to the Court and the Court confirmed it and ordered conveyances executed accordingly; record, pp. 72-75.

Sheriff William Milburn conveyed said lots 34 and 35, to Robert Wash, by deed dated Dec. 30, 1843; record, p. 76. Robert Wash conveyed the same to John O. F. Farrar and Charles T. Sweringen, trustees for plaintiff, by deed dated Dec. 3, 1850; record, p. 80. Said sheriff conveyed lot 33 to Thomas Morrow and John O. F. Farrar, trustees for plaintiff, by deed dated July 3, 1844; record, p. 82. Said trustees in said deeds were dry trustees of the real estate conveyed. All of the foregoing deeds and partition proceedings bound the property conveyed by them respectively on the East by the River, and said lots, except 30, are each 30 feet wide.

Plaintiff read in evidence tax receipts, 1851-1870, on said lots, bounding them South by Dean and generally North by Tyler, a portion of them bounding them East by the River, others merely giving their depths, and others merely the lots; record pp. 132-150.

For the purpose of locating said lots through the alluvion, plaintiff read in evidence an agreement of adjoining proprietors, establishing a division line through said alluvion. This division line had been accepted as the true line, and acquiesced in by all parties and the public authorities for over twenty years; testimony of Dr. W. M. McPheeters, record, p. 278, and Assessor's plats, pp. 272, 273. Said agreement is as follows:

"It is agreed between Silas Bent and Wm. M. McPheeters that their division line is to be at a point on the west line of Main street, 270 feet north of the north line of Dock street, and said line to run eastwardly parallel with the north line of Dock street to the Mississippi River. St. Louis, April 3, 1873. Mary L. Tyler, by Silas Bent, Sallie B. McPheeters and Mary B. Scott and Julia Crosby, by W. M. McPheeters."

Said agreement is endorsed on a private unrecorded plat, record, p. 10, attached to an abstract of title that was produced on the trial by witness, R. E. Collins, attorney for Mary L. Tyler, and it was retained by him, but he permitted it to be copied. It was not signed by plaintiff, nor any one under whom she claimed title, and it was not in her possession nor under her control, and there is no evidence that she had ever seen or heard of the plat prior to the time of the trial.

The plat extends lots Nos. 30 to 37, both inclusive, directly to the western line (produced northwardly from Dock street, across Buchanan Street) of the established but unopened wharf, and the latter is marked Wharf on it, but no statement of a dedication or that it is a public wharf is made. Mary L. Tyler (heir of William Chambers), owned the lots next north of plaintiff, and Sallie B. McPheeters, Mary B. Scott and Julia Crosby (heirs of George Buchanan), owned property next north of Tyler's. The agreement fixes the division line between them, 270 feet north of Dock street, which makes it 120 feet north of and parallel with the north line of plaintiff's lots (Mary L. Tyler's lots being between plaintiff's and the Buchanan heirs), and said line extends from the former mouth of Rocky Branch (point F), where the alluvion began to form after the Labeaume patent issued, to the Mississippi river. Two other parties, George and Frank S. Buchanan (the remaining heirs of George Buchanan), had lots between the former mouth of Rocky Branch and McPheeters, Scott and Crosby, did not sign this agreement. The heirs whose names are signed to it by McPheeters, knew that they were so signed at the time by him and acquiesced in it, and it has been re-

spected by all of said heirs and the public authorities, ever since; Testimony of R. E. Collins, record, p. 8; Dr. W. M. McPheeters, p. 278; J. V. S. Barret, p. 88; Charles T. Farrar, p. 117; C. F. Liebke, p. 193; defendant's plat, p. 102; Assessor's plats, 1874-1895, pp. 272-295, and will of George Buchanan, p. 158.

When plaintiff's attorneys offered this paper (agreement and plat) in evidence, they were asked by Mr. Allen, counsel for defendant, in the midst of the examination of Mr. Collins, if they would undertake to be bound by it, and they replied, "We will concede that;" record, p. 10.

Said R. E. Collins had been employed as Attorney for Mary L. Tyler for a number of years in putting and keeping squatters off her lots, and was employed by plaintiff's agent to do the same service in regard to her lots, about two years before the trial, which he did, and for that purpose obtained a survey of the central portion of them that extended only from Hall, formerly Kennett Street to the established wharf line. This survey was executed after defendants took possession of the premises in controversy, and is shown on defendant's plat, record, p. 102, colored green. The latter survey is also a private unrecorded one, and there is no evidence that plaintiff had ever seen or heard of it before the trial.

THE TESTIMONY FOR PLAINTIFF is to the effect that from the line marked on the plat, record, p. 96, "line at the time of sale by Milburn, sheriff," East to the river, a distance of about 1800 feet in front of these lots, is alluvion formed by accretions; plat, p. 96 of record, and testimony of Surveyor Joyce, on same page. On this point all of the evidence concurs.

That James T. Sweringen, Husband of plaintiff, looked after and cared for these lots up to the time of his death, which occurred about 1872, and from that time until 1875, a Mr. Barret, and from then on Farrar & Bro. and then Farrar & Tate, as her agents, looked after and cared for the whole of these lots down to the river, driving off squatters that built

shanties on them. Also paid taxes on them for her and retained the tax receipts in their possession. That to December, 1890, there was not the slightest improvement of any kind on the east end of the lots, which constitute the premises sued for, and they were in a state of nature and had a growth of willows on them near the river. That squatters collected in the neighborhood and lived near the river in shanties and old boats, and called the place Little Oklahoma; testimony of J. V. S. Barret, record p. 88; John G. Joyce, p. 95 and Charles T. Farrar, p. 117, and a sketch of the premises in front of p. 97 of record. Plaintiff had a house on her lots just west of these that was projected over on these lots, and another house east of the former and on these lots, occupied by tenants. The latter house had been torn down or taken away before the trial; Testimony of Barret, record p. 88 & Farrar, p. 281.

Plaintiff never made any plat, nor did her trustees, dividing or dedicating any portion of these lots for street or wharf, or any other purpose. City Blocks were laid out on them on a plat made by the Street Department of the City prior to 1875, which was subsequently adopted in the Assessor's Office (following the Buchanan partition plat, record, p. 170, of 1866, except next the river). The formation of alluvion was swampy as it was made and remained so for a long time, and it was formed to the present low water mark of the river prior to 1875; Assessor's plats, record, pp. 272-273, and testimony of John G. Joyce, pp. 95, 111. A blank space is left on these latter plats between block 2544 and the river, on some of which it is marked wharf. The last named plats are City plats, read in evidence by defendant, and also plat, record, p. 102, all of which locate plaintiff's lots as she locates them. In about 1870 the city constructed Rocky Branch sewer under Branch Street, and Rocky Branch was filled up here; testimony of J. G. Joyce, record, pp. 95, 115. About 1891 defendant Joy and the railroad began to occupy the premises in controversy, and prior to that time neither plaintiff's agent nor her grandson had ever heard of any adverse claim to or interference with

them; testimony of J. V. S. Barret, record, p. 88, and Charles T. Farrar, p. 117.

The value of the rents of the property in controversy exceeded $100.00 per month for five years prior to the trial of the case; testimony of Charles T. Farrar, record, pp. 117 & 125, and John H. Terry, p. 126.

All of the trustees of plaintiff named in the deeds for this property died years before the commencement of this suit, (testimony of J. V. S. Barret, record, p. 88) and none of them ever had any interest in it except the bare legal title and they were what are termed dry trustees.

THE EVIDENCE FOR DEFENDANT is to the effect that on May 1, 1826, a patent was issued to Rufus Easton for U. S. survey No. 2042, which it read in evidence, record p. 275, the description in which calls for the Rocky Branch, "thence meandering down the branch, east six chains, north thirteen chains, north fifty-three degrees forty-five minutes, east eight chains and fifty links to a point at the mouth of the branch, thence up the Mississippi River." Among the many interferences laid out on the plat of U. S. survey No. 3333, plat, record, p. 14, there is none of survey 2042 (or any other) with these premises, and surveys Nos. 3333 and 2042, merely adjoin each other on the latter plat. George Buchanan, by mesne conveyances, acquired that portion of survey 2042 lying north of Rocky Branch and the Labeaume survey, in 1842; record, pp. 152-157. Defendant on the trial claimed this as an outstanding title to the premises sued for, in George Buchanan's heirs.

The whole of this Buchanan title was admitted against the objection of plaintiff that it was irrelevant.

In 1852, George Buchanan laid out a plat of Bremen, record, p. 190, dividing his land west of the river bank into blocks and lots, marking in red the part he claimed to own and leaving a street along the river bank to Rocky Branch, and the remainder of it east he merely shaded pink. The pink shading

extends south to the water flowing from Rocky Branch and east from the mouth of the branch and along it to where the branch turns southwardly. It does not follow the branch from here but extends eastwardly along or near the north city boundary line. The part shaded pink extends east less than one block from the mouth of Rocky Branch, and no doubt represents the sand beach shown in the plat of the Labeaume patent on p. 14 of the record. Streets were laid out and dedicated on it, but no wharf. There was no interference on this plat with any of plaintiff's lots, and little, if any, with the Tyler lots (which laid between Buchanans and plaintiffs) near the old river bank at the former mouth of Rocky Branch.

July 24, 1857, the executors of George Buchanan, deceased, who held the legal title to his real estate as trustees under his will, record, p. 158, executed a lease to Christian E. Letzig, Carl H. Schrage and Christian Liebke, for nine years and five months, for that portion of the land embraced in said plat lying east of Second Street as laid down on it, to the river, record, p. 167. Under this lease they occupied from Buchanan Street south to Rocky Branch as far as the Buchanan title went, claiming nothing more than the Buchanan title under said lease; testimony of Liebke, record, pp. 190, 200. They had a saw mill near Second and Buchanan Streets, which they operated, buying logs that had been rafted down the river and landed in or near the bend of the river there, where an eddy was formed, and then drew them up to firm land for use. Rafts, barges and steamboats landed in and near said bend in the river, as occasion or business required; testimony of C. F. Liebke, record, p. 190; James M. Montgomery, p. 205; John H. McBride, 210.

At the expiration of this lease by the executors, the five Buchanan heirs partitioned this land, laying it off into blocks, with streets and alleys (but no wharf or street or alley next the river), bounding it on the south by Rocky Branch. Rocky Branch began at that time to interfere with these lots a little east of the west line of the city block 660, crossed them diagonally in a southeasterly direction and emptied into the

river a little south of Dock street, which it crossed; Partition plat, record, p. 170, and defendant's larger plat, p. 102. The former plat does not include any portion of the premises sued for in this action, which are shown by both of said plats to have been and were then under the river. The lots on the partition plat along the northern side also interfere with the Tyler property on the north. These interfering lots were assigned respectively, by the partition, beginning at the river and going west, to Mary B. Scott, George Buchanan, Sallie B. McPheeters, Julia Crosby again, F. S. Buchanan and George Buchanan again, the last and most western lot. Said plat has on it a dotted line about 30 feet south of said agreed line between Tyler and Buchanan heirs, and the four lots immediately north of the agreed line, beginning at the river and going west were assigned to Julia Crosby, one of the Buchanan heirs.

After this partition, Christian Liebke rented from all of these Buchanan heirs, except George Buchanan, and occupied portions of these interfering lots, to the time in 1873, of said agreed line, and after that time to said line by hauling and placing logs on them, excepting the George Buchanan portion. The latter was unoccupied. The testimony of Mr. Liebke, the only witness to this occupation, shows clearly that it was not under a claim of ownership if not owned by the Buchanans, and not continuous, as logs received during the rafting season were removed for use, leaving the land vacant, and that he did not intend to occupy or claim any land the title to which did not belong to the Buchanan heirs. That he did not in fact either occupy intentionally, or claim any portion of the property in controversy, although he might occasionally have drawn logs over it; Liebke's testimony, record, pp. 190-204.

The water flowing through the sand beach from Rocky Branch, when the river was not over the beach, changed its course with every high stage of the river, and no two of the various plats made at different times locate it at the same place, and there is no evidence that any alluvion ever formed to its banks by accretion.

In 1845 there was enacted a law (Laws Mo., 1844-45, p. 90) authorizing the city to construct works, either within or without the city, to improve and secure the harbor and remove obstructions to navigation. In about 1858 a spur dike extending out into the river, located at least one and a half blocks north of this property, was constructed by the city, and a second one near, later; testimony of Liebke, record, p. 190; James Montgomery, p. 205. In about 1864, the city began the construction of a longitudinal dike about one thousand feet out in the river in front of these lots, made of stone thrown into the water from barges until they reached about low water in the river. It was several years before the latter dike was completed, and it connected with said spur-dike up north and extended south to about the point of the bend in the river below. The effect of it was to impede the current and leave pools and sediment after every high water, between it and the river bank, and alluvion continued to form more rapidly to this property, and the dike is now along its eastern edge and is at low water mark of the river; testimony of John G. Joyce, record, p. 95, Herman Richtien, 214, and Julius Moulton, 216.

The land in controversy was never a wharf, nor was it ever used as a wharf by defendant or the public, but an ordinance was passed, approved August 6, 1864, to establish and open a wharf from the south side of Biddle Street to the northern boundary of the city, which then extended north to Ferry Street, fixing definitely by metes and monuments its western line, which crosses plaintiff's lots about 350 feet west of the present low water mark of the river; City Ordinance No. 5403, record, p. 222. By it the Land Commissioner was authorized and instructed to cause the wharf as established to be opened according to law. He did not open it and no wharf has ever been constructed, nor any improvements in the nature of a wharf ever made by the city, over the property in controversy, or along or north of the block in front of which it is situate. All of the evidence for both plaintiff and defendant established these facts. Julius Moulton, City Engineer, ran out this western

wharf line about 1883 or 1884, and placed stones along it where it forms the western line of the property sued for; record, p. 216.

The City began proceedings to open Kennett, now Hall Street, in 1870, record, pp. 234-260, but there was no legal service of process on the plaintiff and no attempt to serve any either on her husband or her trustees. The return of the marshal as to service on her is as follows: "Also by leaving a true copy of the same this 18th day of July, 1870, at the usual place of abode of the within named defendants, Henry Overstolz and Martha Sweringen, with a member of their family over the age of fifteen years;" record, p. 237. The verdict in the case is not signed by any of the jury, record, pp. 248-260, each of whom were required by Sec. 3, Art. 8, of the Charter, Laws Mo. 1870, p. 479, to sign it, and no judgment was rendered on it by the Land Commissioner as required by section 6 of article 2, of the Ordinance under which he was acting, record, p. 227. The plat of the benefit district in the case, made by the Street Department and certified by the City Engineer, June 1, 1870, record in front of p. 261, shows City Block 2544 (the east line of which is the same as the western line of said established wharf), and a street and part of Block 660E, out in the river at that time and east of the benefit district. The premises in controversy are east of City Block 2544, which block was then unformed, and these premises are still further out on it in the bed of the river under water. In designating owners of property north of Rocky Branch, it follows the Buchanan partition plat on p. 170 of the record. This benefit district plat was made prior to June 1, 1870, nearly and possibly more than three years prior to the agreed line of April 3, 1873, between Tyler and Buchanan, and it locates Tyler's lots through the alluvion, south of Rocky Branch, so as to cover plaintiff's and Dean's lots, in part.

Said verdict purported to assess benefits against plaintiff, for the collection of which an attempted sale under an execution

that referred to a judgment as having been rendered on said verdict, was made and deed executed to the city, in 1871, by the City Marshal, for a lot of ground in City Block No. 308E, 90 feet front by 224 feet 11 inches deep, described in such manner that it can not be located, bounding it front on ——— Street, north by Tyler street, there being no such street there, east by ———, South by Dean, west by Sweringen et al., record, p. 260. The City executed a deed back to her, by the same description in 1879; record, p. 265.

Said street opening proceeding and deed were read in evidence against repeated objections by counsel for plaintiff.

After the line agreed upon between Tyler and Buchanans, April 3, 1873, and land had formed east into or through Block 2544, the Assessor's office in 1874, adopted said Street Department plat and Block numbers and began to assess the property by extending the lines of all of the lots between Buchanan and Dock Streets, directly through the alluvion numbered in Blocks as aforesaid, omitting streets, to the east line of Block 2544, but did not attach any Nos. to the lots as extended through the new blocks, but assessed them by giving as boundaries the adjoining lots on the north and south in the names of their respective owners. This is still the case. See Assessor's plats, 1874-1895, record, pp. 272-273, read in evidence by defendant. On some of these plats the space between Block 2544 and the river is marked wharf, and the authorities either failed to, from its formation, or quit assessing it and have not assessed it since the Street Department plat was adopted in 1874. The Clerk in the Assessor's Office made out the tax bills accordingly on the remainder of plaintiff's lots, bounding the portion of them through Block 2544, East by Wharf, as shown by said tax bills, Testimony of Ernst Boedicker; record, pp. 270-274.

There is no return of any of plaintiff's lots for assessment, either by or for her, in evidence. No wharfage appears to have been either collected or demanded of river craft at or near these premises.

Defendant read in evidence said tax bills receipted for the years 1875-1895, except for the year 1893; record, pp. 276-277. Most of them are on a large amount of plaintiff's property in addition to said lots 33, 34 and 35, and include the whole of the latter running through Blocks 308 E, 660 W, 660, 660 E, and 2544, and bounds them south by Dean, and north by Tyler the same as in all of the plats of them since April, 1873, the time of the agreed line.

Defendant also read in evidence the plats, record, p. 102, containing the field notes of surveyor Joyce in the vicinity of this property. These field notes are the result of his investigations and surveys, as he testified; record, p. 102. The plat locates plaintiff's lots marked green, and Mary L. Tyler's marked red, down to the established wharf line, just as they are located on plaintiff's plat to that line, record, p. 96, It also shows the agreed line of April, 1873, and the Buchanan partition plat.

Also read a lease from the City of St. Louis to Justin E. Joy, pursuant to City Ordinance No. 16161 entitled: "An ordinance to lease to Justin E. Joy a portion of the unimproved wharf at and north of the foot of Dock Street," approved April 19, 1891, that authorized such leasing of a portion of unimproved wharf to him for a period of fifteen years from the date of approval of said ordinance, at an annual rental of six hundred dollars for the first five years, $1,200 for the second and $1,800 for the third five years, to be used by him for the purpose of landing, hauling and storing lumber thereon. The property so leased embraced 152,000 square feet, including the premises in controversy, lying east of the C. B. & Q. R. R. track; record, pp. 267-270. About the same time the Chicago, Burlington & Quincy R. R. Co. began to occupy a strip about 40 feet wide and 11 feet east of said wharf line, for a track, across these lots.

Down to this time, aside from a few transient squatters, that were put off from time to time, these lots from First or Main Street to the river, remained in a wild or natural state,

overgrown with willows and underbrush as far west as Hall, fomerly Kennett Street, from the river beach towards the houses of defendant on the west end of them; testimony of J. V. S. Barret, record, p. 88, John G. Joyce, p. 95; Charles T. Farrar, p. 117; Julius Moulton, p. 216.

DEFENDANT HERE RESTED and asked but one instruction which is in the nature of a demurrer to the whole evidence, which the court refused and defendant duly excepted; record, p. 283.

The court then gave the following instructions for plaintiff, to which defendant objected and duly excepted.

The court declares the law to be that the conveyances read in evidence by plaintiff, vested the legal title to lots numbers, thirty-three, thirty-four and thirty-five, described in a portion of said conveyances, in the trustees of Martha J. Sweringen and constituted the owners thereof, riparian proprietors.

The court further declares the law to be, that any addition made to the land described in the deeds read in evidence by plaintiff, to Martha J. Sweringen's trustees, by gradual or imperceptible deposits from the Mississippi river is to be taken and considered, as the same formed, as a portion of the land described in said deeds, notwithstanding the fact that such addition of land may have been aided or caused by a dyke or dykes built in said river by the city of St. Louis.

The court declares the law to be, that the deed from the city to Martha J. Sweringen, offered in evidence, does not estop plaintiff from maintaining this action, if she can otherwise maintain it.

The court further declares the law to be, that although plaintiff may have known that a railroad was being built across the premises sued for, and failed to object to or protest against the building of the same, that such failure did not deprive her of any right she may otherwise have had to maintain this action.

The court further declares the law to be, that the acts and conduct of the respective parties hereto, are insufficient to estab-

lish an estoppel *in pais* against the plaintiff, or to deprive her of any right she may otherwise have had to maintain this action.

The court further declares the law to be, that although plaintiff may have failed to pay taxes for a number of years on the premises sued for, that such failure did not deprive her of any right she may otherwise have had to maintain this action.

The court further declares the law to be that in order to find that the owner of any part of the premises sued for, dedicated the same for the purpose of a wharf or street, by matter *in pais*, the proof that the owner intended and consented to make such dedication should be so full and persuasive as to leave no reasonable doubt of such intent and consent, and the acts of such owner relied on to establish such intent and consent must be irreconcilable witth any construction, except such intent and consent.

The court further declares the law to be, that the evidence is insufficient to show that any portion of the premises sued for were dedicated for a wharf or street; record, p. 283.

A jury having been waived, the court took the case under advisement and rendered a verdict or finding for plaintiff, as follows:

Martha J. Sweringen,
vs. No. 99865.
City of St. Louis and Justin E. Joy.

The court declares the law to be that under the pleadings and evidence the plaintiff is entitled to judgment for the possession of the following described premises, situated in the city of St. Louis and State of Missouri, and bounded as follows: On the east by the Mississippi river; on the west by a line coincident with the alleged western boundary of the wharf, as set forth in Ordinance 5403, which line is 90 feet and 9 1-4 inches in length along northwardly with said alleged wharf line, and commences at a point 60 feet and 6 1-4 inches north of the intersection of the north line of Dock street, with said alleged

wharf line; on the south by a line parallel to the north line of Dock street produced to the river, and 60 feet and 6 1-4 inches north of the same; and on the north by a line parallel to the south line, and 90 feet therefrom; and the plaintiff is also entitled to judgment against the city of St. Louis for $5,000 damages for the detention of said property during the five years preceding the date of this judgment and the plaintiff is also entitled to have the value of the monthly rents and profits established at $100; record, p. 284.

Said verdict or finding was on December 2, 1896, and on the same day the court rendered judgment in favor of plaintiff for possession of the premises, damages and monthly rents as therein found, with costs, and ordered execution and a writ of possession for the same; record, p. 285.

On December 3, 1896, the City of St. Louis, defendant, filed a motion for a new trial, which was overruled by the Court and all the necessary steps were taken by it to secure an appeal to and review of the case by the Supreme Court of the State of Missouri and an appeal was granted to it to said Supreme Court. No appeal was taken or asked for by or in behalf of defendant Justin E. Joy; record pp. 7 and 289.

The cause was argued and submitted in said Supreme Court, and on June 15, 1899, it rendered a judgment therein and reversed the judgment of said Circuit Court for the City of St. Louis, for plaintiff, and rendered a judgment for defendant; record, p. 290. The opinion filed in said Supreme Court, record, p. 291, makes a statement of facts (containing some misapprehensions of what the record shows), and the objections made to the introduction of the Labeaume patent in evidence in the court below, by the defendant, to the effect that it did not vest riparian rights, and then sums up the points on which the case is determined, as follows:

"It is fundamental in the law of accretions that the lands to which they attach must be bounded by the river or stream to entitle its owner to such increase.

* * * * * * * *

"Now in the patent to Lebeaume, the river is not mentioned as a boundary. On the contrary, the eastern boundary is a permanent line, fixed by courses and distances, metes and monuments, "between high and low water mark;" and the accompanying survey exhibits a tract of fourteen acres or more between the eastern boundary and the river itself."

The latter statement is assumed to be true in the opinion, in direct conflict with the statement in the "Remarks" in the patent, record, p. 23, that these 14 acres are a portion of U. S. Survey No. 3333, and aid in making its excess of 21.52 acres over the area of Soulard's survey.

"Whatever may have been the original Spanish concession, the survey and patent made under the confirmation, in 1852, must control as to the extent of Labeaume's right.

* * * * * * * *

"Our conclusion is that as Labeaume was not a riparian owner, his heirs or grantees can not recover the tract in suit as an accretion. The court therefore erred in admitting the patent as any evidence of title to the land in suit, as it did not purport to convey it to Labeaume.

"Plaintiff, then, having no paper title to the land in suit, is remitted to an actual, continuous adverse possession of the tract as her basis of recovery. She has no color of title by which her possession of a part can extend to the whole."

The latter ruling results from the misconstruction of the patent as a necessary consequence, for if the patent vested in her riparian rights, she then had the legal title which carried with it the constructive possession.

The opinion then states facts bearing on such adverse possession, beginning with those considered as tending to negative the same by plaintiff (also containing misapprehensions of what the record shows), but instead of deciding the case on them, it shows specifically that no such decision was either made, or intended to have been made, by the concluding statement on the question on p. 296 of record, as follows:

"So much for the negative aspect of her adverse possession."

It then states the affirmative proof for plaintiff in regard to her actual possession of part of her lots, but not extending to or over the premises in controversy, and it then concludes:

"It follows that plaintiff introduced no evidence to show possession or seizin of the tract sued, *within* (should be, for) ten years before the commencement of her action, and the Circuit Court erred in not so holding, as plaintiff had no paper title drawing to her the possession.

"In view of this conclusion, we do not deem it necessary to enter into a discussion of various other incidental questions which arose in the case.

"In our opinion, there was no evidence to sustain the judgment of the Court, and it is accordingly reversed;" record, pp. 282-297.

A motion for a rehearing was filed in the case by the plaintiff, based on what she claimed to be a misconstruction of said patent, which the Court denied on July 3, 1899, record pp. 297-301. Plaintiff's counsel did not state in specific words in said motion that there was a federal question in the case.

October 3, 1900, a writ of error was issued from this Court to the Supreme Court of the State of Missouri, in this case, and a citation issued and service of same acknowledged October 4, 1900. Said writ of error was duly returned by the Clerk of the latter Court, the case docketed and the record filed with the Clerk of this Court, October 31, 1900; record, pp. 2, 3, 304.

The errors assigned herein and prayer for reversal, are as follows:

1. The Court erred in said cause in deciding that the Court below erred in admitting the patent to Louis Labeaume or his legal representatives in evidence, as any evidence of title to the land in suit in said cause.

2. The Court erred in said cause in construing the United States patent to Louis Labeaume and in deciding that the patent to Louis Labeaume or his legal representatives did not purport

to convey the land in suit in said cause.

3. The Court erred in said cause in deciding that said Louis Labeaume was not a riparian owner and that his heirs or grantees could not recover the tract of land in suit as an accretion, in said cause.

4. The court erred in said cause in deciding that the plaintiff in error had no paper title to the land in suit in said cause.

5. The court erred in said cause in deciding that the court below erred in overruling the objections of defendants to the patent of Louis Labeaume, or his legal representatives, as irrelevant and immaterial and not tending to support the issue in said cause, and not showing the plaintiff was a riparian owner, and admitting said patent in evidence in said cause.

6. The court erred in said cause in deciding that there was no evidence to sustain the judgment of the court below, in said cause.

7. The court erred in said cause in reversing the judgment of the court below in said cause.

8. The court erred in said cause in rendering judgment in favor of the defendants in said cause.

WHEREFORE, the said plaintiff in error prays the Honorable Court to examine and correct the errors assigned and for a reversal of the judgment of the Supreme Court of the State of Missouri entered in the above entitled cause, and for an affirmance of the judgment of the court below—the Circuit Court of the City of St. Louis, Missouri, in said cause; record, pp. 1 and 302.

The foregoing statement is of the whole case. We have nothing to add to the brief of plaintiff in error, on the motion to dismiss or affirm, now on file, and shall not repeat what is said in it except so far as it may have a bearing on the remaining questions on the merits of the case not therein presented.

POINTS AND AUTHORITIES.

1. The first questions requiring consideration after the one of jurisdiction, heretofore presented, are the validity and proper construction of said patent to Louis Labeaume or his legal representatives, in regard to whether it bounded the land granted by the Mississippi River, and vested riparian ownership in said grantees, and the alluvion formed to the bank of said river in front of the land granted, by accretions, as claimed by plaintiff, and if not, was the legal title to the remainder of the land so confirmed, granted to said legal representatives of said Labeaume, by an Act of Congress approved June 6, 1874, and the title and ownership of said alluvion thereby vested in them?

The first section of said Act of Congress is as follows:

"That all of the right, title and interest of the United States in and to all the lands in the State of Missouri, which have at any time heretofore been confirmed to any person or persons by any Act of Congress, or by any officer or officers, or board or boards of commissioners, acting under and by authority of any Act of Congress, shall be, and the same are hereby granted, released and relinquished by the United States, in fee simple, to the respective owners of the equitable titles thereto, and to their respective heirs and assigns forever, as fully and completely in every respect whatever, as could be done by patents issued therefor according to law;" 18 U. S. Stats. at Large, p. 62.

A verdict was rendered in favor of plaintiff, and judgment was entered thereon, for possession and damages. Defendant appealed to the Supreme Court of Missouri, which reversed said judgment and rendered a judgment in favor of defendant, deciding that the land granted to Louis Lebeaume was not bounded on the east by the Mississippi River; that the court below erred in overruling the objection of defendant to the introduction of said patent in evidence; that Lebeaume was

not a riparian owner, and that, therefore, the plaintiff in error, as his grantee, could not recover the land in suit as an accretion.

These rulings constitute the substance of the errors assigned herein in various forms.

2. The recitals, plats and statements in the patent to Louis Labeaume or his legal representatives, show that U. S. Survey No. 3333, was a mere retracing of Antoine Soulard's Survey of the Spanish concession to him, which survey is also embraced in the patent and discloses to the naked eye that it was bounded on the east by the Mississippi River, and said river continued to be its eastern boundary as alluvion formed thereto; see authorities cited in point 7 herein. The remarks in the patent state that the tract was bounded on the east by the Mississippi river, and that accretions had formed to it since Soulard's operations to the extent of about fourteen acres, which are included in said survey No. 3333, and the further statement made that they were then rapidly advancing. These recitals and remarks evidence the intention of the United States to fix the eastern line of survey No. 3333, as the Mississippi river, recognize its boundary as such, and entitle the patentees to all alluvion then formed and such as was forming and to be formed, to Soulard's Survey; King v. St. Louis, Mem. of Judge Adams, in U. S. Ct. Ct., East. Div. East. Judicial Dist. of Mo., filed May 16, 1900, unreported but a copy of same is on file herein and printed in defendant's motion to dismiss or affirm, 46-50; West v. Cochran, 17 How. 58 U. S. 403, 410; Maguire v. Tyler, 8 Wall. 75 U. S. 650, 655; Tyler v. Wells, 2 Mo. App. 526, affirmed, 70 Mo. 33; all decisions on this patent. See also, Presnell v. Hadley, 141 Mo. 187, 191-194; Walton v. Drumtra, 152 Mo. 489, 497; Johnson v. Bowlware, 149 Mo. 451, 456; Carter v. Foster, 145 Mo. 383, 392; West v. Bretelle, 115 Mo. 653, 658, holding that the intention of the parties is to be ascertained by considering all of the provisions of the deed, as well as the situation of the parties thereto. Besides, this call for the river controls courses, distances and quantity, and the corners, monuments and meander lines of a

survey; Gould on Waters, sec. 194.

3. This call for Soulard's survey in the patent made that survey not only a monument, but the chief monument called for in it, and if there were any calls in U. S. Survey No. 3333, inconsistent with Soulard's survey, they should be rejected even though such call be, or the plat of the former survey show it to be, a monument also, and the true description held to be Soulard's survey; Rutherford v. Tracy, 48 Mo. 325, 326; Jamison v. Fopiana, 48 Mo. 194; Cooley v. Warren, 53 Mo. 166, 167; West v. Bretelle, 115 Mo. 653, 660; Simpson v. Railroad, 145 Mo. 64, 79; Johnson v. Bowlware, 149 Mo. 451, 456.

4. A grant by the United States bounded on a navigable river, either above or below tide-water, extends only to high-water mark. The land between high and low-water marks belongs to the State and may either be retained by the State or conceded to the riparian owner, and the United States can not sell it, except perhaps for public purposes; Barney v. Keokuk, 94 U. S. 324, 337; Packer v. Bird, 137 U. S. 661, 671; Hardin v. Jordan, 140 U. S. 371, 382; Shivley v. Bowlby, 152 U. S. 1, 27. But the right to alluvion does not depend on the ownership of the land between high and low-water mark; ownership to the former line, or bank, which is the same, vests this right; Shively v. Bowlby, 152 U. S., 1, 35; Lovingston v. St. Clair County, 64 Ill. 56; St. Clair County v. Lovingston, 23 Wall. (90 U. S.) 46, 68; Meyers v. St. Louis, 8 Mo. App. 266, 272. In Missouri, a riparian proprietor owns to low-water mark; Shively v. Bowlby, 152 U. S. 1, 35; Cooley v. Golden, 117 Mo. 33, 43-48; Railroad v. Union Stock Yards, 120 Mo. 541, 552; Hahn v. Dawson, 134 Mo. 581, 591; McBain v. Johnson, 155 Mo. 191, 201; Moore v. Farmer, 156 Mo. 33, 47.

5. The bank of a river is coincident with the edge of the water of the river at its fullest, or high-water mark; Houck on Rivers, sec. 8; Gould on Waters, sec. 45; 3 Am. and Eng. Ency. of Law, 784, 2d Ed.; Angell on Water Courses, sec. 4, n. 4. The bed is covered by the river, and the bank is that part

of the bed lying between the top of the bank or high-water mark, and where water actually flows, and it is part of the river bed; Houck on Rivers, secs. 6, 7, 8, 9, 10 and 183; Angell on Water Courses, sec. 4,n. 4; Gould on Waters, sec. 45; 3 Am. and Eng. Ency. of Law, 784 and 905, 2d Ed. And a call for the water of a river, the bank or shore of a river, by, with, along or on a river or its margin or its high-water mark; a corner at, in or near a river or its bank to another such call; or for a river bank, or from one point to another on a river bank, are legally synonymous terms, and are variations of a call for a river when used in grants, and so bounds them; Gould on Waters, sec. 197; County of St. Clair v. Lovingston, 23 Wall. (90 U. S.) 46, 64 and 65; Howard v. Ingersoll, 13 How. (54 U.S.) 381, 422; St. Louis v. Rutz, 138 U. S. 226, 243; Packer v. Bird, 137 U. S. 661, 666-668; Labeau v. Gaven, 37 Mo. 556, 557-558.

"The bank and water are correlative. You can not own one without touching the other;" Starr v. Child, 20 Wend. 149, 152; Angell on Water Courses, sec. 26.

6. The word riparian comes from Latin *ripa*, a river bank, and denotes such rights as follow or are connected with the ownership of the bank; Gould on Waters, sec. 148; and where the concession, confirmation and survey distinctly called for the bank of the Mississippi river as the eastern boundary of the land granted and confirmed, it was held sufficient to carry all accretions made thereon since the origin of the title, beyond a doubt; Labeau v. Gaven, 37 Mo. 556, 557-558. The survey fixes the east line in the patent on the right bank of the river between high and lowwater mark, a point beyond which the United States would not ordinarily convey, and beyond the bank and in the river bed, and further than the law requires for that purpose, so that necessarily the patent vested a right to the alluvion. Besides, ownership to the bank vests such right. One person may own the bank, or to the bank, and another the bed of a river, and the former will own the alluvion formed to the bank; Hindson v. Ashby, 1 Ch. L. R., 1896, 78, 82; Dunlap

v. Stetson, 4 Mason 349, 366; Child v. Starr, 4 Hill (N. Y.) 369, 376.

7. Grants of land by the United States bounded on streams and other waters, made without restriction or reservation, are construed most favorably to the grantees, and that all lands that might have passed by them actually passed; Grand Rapids & Ind. Rd. Co. v. Butler, 159 U. S. 87, 89-91; Gould on Waters, secs. 195, 196, 197; Angell on Water Courses, sec. 23. And a grant by the United States of land bounded by navigable waters, which boundary we have seen is necessarily high-water mark, vests in the grantee and those deriving title from him, all alluvion formed to such grant, and the alluvion formed by accretions to said patent, or the grant by said act of Congress, became a portion of the land granted as fast as it was formed and was vested thereby in said Lebeaume or his legal representatives in the same manner that the owner of a tree is vested with the title to its fruit; Municipality No. 2 v. Orleans Cotton Press, 18 La. 122, 213.

In New Orleans v. United States, 10 Pet. (35 U. S.) 662, 717, the court said:

"The question is well settled at common law, that the person whose land is bounded by a stream of water, which changes its course gradually by alluvial formations, shall still hold the same boundary, including the accumulated soil;" Jefferis v. East Omaha Land Co., 134 U. S. 178, 189-196; Schools v. Risley, 10 Wall. (77 U. S.) 91, 110; County of St. Clair v. Lovingston, 23 Wall. (90 U. S.) 46, 68; Jones v. Johnston, 18 How. (59 U. S.) 150, 155; Jones v. Soulard, 24 How. (65 U. S.) 41, 63; Banks v. Ogden, 2 Wall. (69 U. S.) 57, 67; St. Louis v. Rutz, 138 U. S. 226, 241, 245; Saulet v. Shepherd, 4 Wall. (71 U. S.) 502, 508; Nebraska v. Iowa, 143 U. S. 359, 360; Campbell v. Laclede Gas Light Co., 84 Mo. 352, 372; Benne v. Miller, 149 Mo. 228, 238; Gorton v. Rice, 153 Mo. 676, 683; McBaine v. Johnson, 155 Mo. 191, 200; Land Co. v. Thompson, 157 Mo. 647, 654.

This is irrespective of the question as to whether the grant

carries title to high or low-water mark. Commenting on this proposition in Shively v. Bowlby, 152 U. S. 1, 35, the court said:

"The rule, everywhere admitted, that where the land encroaches upon the water by gradual and imperceptible degrees, the accretion or alluvion belongs to the owner of the land, is equally applicable to lands bounding on tide waters or on fresh waters, and to the King or State as private persons; and is independent of the law governing the title in the soil covered by the water;" Handly v. Anthony, 5 Wheat. (18 U. S.) 374, 380; Jefferis v. East Omaha Land Co., 134 U. S. 178, 189-193; Nebraska v. Iowa, 143 U. S. 359, 360; County of St. Clair v. Lovingston, 23 Wall. (90 U. S.) 46, 68; Barney v. Keokuk, 94 U. S. 324; Meyers v. St. Louis, 8 Mo. App. 266, 272; Cooley v. Golden, 117 Mo. 33, 48. And the fact that they were aided or caused by artificial means is immaterial; Whyte v. St. Louis, 153 Mo. 80, 87; Tatum v. St. Louis, 125 Mo. 647, 654; Jones v. Soulard, 24 How. (65 U. S.) 41, 43, 64; St. Clair County v. Lovingston, 23 Wall. (90 U. S.) 46, 66; Railroad v. Illinois, 146 U. S. 387-445.

8. The eastern line in this survey is expressed in the field notes to be a meander line on the right bank of the river, between high and low-water mark, and it varies with the river in its course, but if they had merely stated it to be a line on or along the bank, it would have been a meander line.

"The meander lines run along or near the margin of such waters are run for the purpose of ascertaining the exact quantity of the upland to be charged for, and not for the purpose of limiting the title of the grantee to such meander lines. It has frequently been held, both by the Federal and State Courts, that such meander lines are intended for the purpose of bounding and abutting the lands granted upon the waters whose margins are thus meandered; and that the waters themselves constitute the real boundary;" Hardin v. Jordan, 140 U. S. 371, 380; affirmed, Mitchell v. Smale, Id. 406, and Grand Rapids & Ind. Rd. Co. v. Butler, 159 U. S. 87, 92; Jefferis v. East

Omaha Land Co., 134 U. S. 178, 196; St. Clair County v. Lovingston, 23 Wall. (90 U. S.) 46; Railroad Co. v. Schurmeier, 7 Wall. (74 U. S.) 272, 286; Forsyth v. Smale, 7 Bissell, 201, 204; Shelton v. Maupin, 16 Mo. 124, 126; Smith v. St. Louis Public Schools, 30 Mo. 290, 309; Labeau v. Gaven, 37 Mo. 556; Cooley v. Golden, 117 Mo. 33, 54; Wood v. Appal, 63 Pa. St. 210, 221; Moore v. Willamette Trans. etc. Co., 7 Oregon, 355, 356; St. Paul etc. Rd. Co. v. First Division etc. Rd., 26 Minn. 31; Ladd v. Osborne, 79 Iowa, 93, 95; Weber v. Pere Marquette Boom Co., 62 Mich. 626; Stephenson v. Goff, 10 Rob. 99; Menesha Wooden Ware Co. v. Lawson, 70 Wis. 600; Turner v. Parker, 14 Ore. 340; Norcross v. Griffith, 65 Wis. 599, 609; Gould on Waters, sec. 76. The word "meander," as used in said field notes, meant to follow the sinuosities of the river; Turner v. Parker, 14 Ore. 340, 341, and located as this line was, it would have been a meander line without such designation, or any mention of the river in the patent; Norcross v. Griffith, 65 Wis. 599, 609.

9. The plat of U. S. Survey No. 3333 shows clearly that there was no land between its eastern line and the river; only a sandbar, part of the river bed, marked "sand beach" and plainly stamped on its face, "Mississippi River." There is an arrow on it showing the course of the water over it. Also a couple of fine lines broken at short intervals, immediately east of said eastern line, indicating small banks left by the water as it fell, the line itself meandering or varying with the course of the river. Further, a dotted line drawn from point F, over the sandbar, being an extension of the north line of the survey, which runs at an angle of 2½ degrees north of east (not due east as the north city limit line runs, and which is nowhere mentioned), showing where the north line would have been continued if the sandbar had been land. This plat demonstrates that, wherever the eastern line was drawn, it was a meander line on the river and that the boundary of the survey was the river; Shelton v. Maupin, 16 Mo. 124, 126-128; Railroad Co. v. Schurmeier, 7 Wall. (74 U. S.) 272, 276; Hardin v. Jordan,

140 U. S. 371, 373; Jefferis v. East Omaha Land Co., 134 U. S. 178, 194; Grand Rapids & Ind. Rd. Co. v. Butler, 159 U. S. 87, 89; St. Paul etc. Rd. Co. v. First Division etc. Rd. Co., 26 Minn. 31. The case of Niles v. Cedar Point Club, 175 U. S. 300 (54 U. S. App. 668), in no manner modifies or conflicts with the foregoing citations, as Justice Brewer bases his opinion in the latter case on the ground that the marsh was land, not a sandbar as in this case, and that the surveyor suspended his work and left, p. 306. As shown by the plat in 54 U. S. App. 672, nearly two sections of land lie between where the surveyor quit work and the lake, and this land is not marked lake on the plat. And see Horne v. Smith, 159 U. S. 40, 45.

10. The alluvion formed to U. S. Survey No. 3333, as a calculation made from a plat shows, exceed 94 acres (and lots 33, 34 and 35, run through three and a fourth blocks of it, immediately west of the premises sued for), and at a low estimate is worth $2,000,000. In 1854, in the case of West v. Cochran, 17 How. (54 U. S.) 403, 410, it was held that said survey was merely a retracing of the lines of Soulard's survey and in 1869, in the case of Maguire v. Tyler, 8 Wall. (75 U. S.) 650, 655, it was held that Soulard's survey was bounded on the east by the river. These were followed by the decision in Tyler v. Wells, 2 Mo. App. 526, in 1876, affirmed, 70 Mo. 33, in 1879. These decisions are *stare decisis* of the question that the eastern boundary of this survey is the river, and established a rule of property in that respect, and we respectfully suggest that they should be adhered to as such, and this case reversed, as it invalidates all private titles to said alluvion, and there are many of these titles, and large and valuable improvements on the lands, which have been held for a generation at least, under the former rulings; Wilson v. Beckwith, 140 Mo. 359, 381.

The cases cited in the opinion of the Supreme Court of Missouri herein, are reviewed in the argument appended hereto, and the mistakes in said opinion are also noticed.

11. The recitals and statements in said patent to Louis Labeaume or his legal representatives, show that the confirma-

tion vested the equitable title to the land confirmed in said Labeaume and it was final and binding on the United States; Strother v. Lucas, 12 Pet. (37 U. S.) 410, 454; LesBois v. Brammel, 4 How. (45 U. S.) 449, 457, 463; Landes v. Brandt, 10 How. (51 U. S.) 348, 370; Willot v. Sandford, 19 How. (60 U. S.) 79, 80, and it states all of the facts required to make a perfect legal title in said Labeaume, under said Act of Congress of June 6, 1874, to said confirmation, and said recitals and statements are legal evidence; Wright v. Roseberry, 121 U. S. 488, 497-499; Langdeau v. Hanes, 21 Wall. (88 U. S.) 521, 529. This Act is curative in its effect, in furtherance of justice and should be liberally construed. It was enacted long after the patent in this case was issued, and no doubt was intended at least in part to correct an omission of a portion of the land confirmed, from a survey, and relieve the confirmee from the binding effect of its acceptance, as previously held in Smith v. City of St. Louis, 21 Mo. 36, 39, and cases cited, and if said patent was defective and failed to convey said confirmation or any part thereof, to said Labeaume or his legal representatives, then said Act of Congress conveyed the same or the remainder of it; Campbell v. Laclede Gas Light Co., 119 U. S. 445, 446, and vested riparian rights in the grantees, as Soulard's survey and said confirmation are unquestionably bounded by the Mississippi River. And see also, Ryan v. Carter, 93 U. S. 78, 81.

12. The objection to reading the patent to Louis Labeaume or his legal representatives, in evidence, was properly overruled by the State Circuit Court, because, it was not well taken and for the additional reason that it was competent evidence to prove the Spanish concession, survey and confirmation to said Labeaume; Wright v. Roseberry, 121 U. S. 488, 497-499; Langdeau v. Hanes, 21 Wall. (88 U. S.) 521, 529. It necessarily follows that the same objection to each of plaintiff's deeds was properly overruled. The death of plaintiff's husband, in 1872, vested the legal title of the lots, formerly held

by her trustees, in her; Roberts v. Mosley, 51 Mo. 282, 286; Baker v. Nall, 59 Mo. 265, 268.

13. The plats read in evidence by both plaintiff and defendant locate her lots through the alluvion in the same manner, and they are conclusive on that question in this case; Land Co. v. Thompson, 157 Mo. 647, 654. And the long acquiescence of all parties in this location, is conclusive of its correctness, "not upon the theory that they are only evidence of a parole agreement establishing the line, but because they are of themselves proof that the location is correct, and of so controlling a nature as to preclude the contrary;" Bartlett v. Brown, 121 Mo. 353, 363; Coleman v. Drane, 116 Mo. 387, 395; Schad v. Sharp, 95 Mo. 573, 578; Jacobs v. Moseley, 91 Mo. 457, 462; Turner v. Baker, 64 Mo. 218, 238; Blair v. Smith, 16 Mo. 273, 281; Taylor v. Zepp, 14 Mo. 482, 489; Gould on Waters, sec. 162, and the agreement between Tyler and the Buchanan heirs, and the tax receipts and plats, are competent evidence on the question of location; Sparhawk v. Ballard, 1 Met. (42 Mass.) 95, 100; Schools v. Risley, 40 Mo. 356, 370, and same case, 10 Wall. (77 U. S.) 93, 96, 112. Under this state of facts the deeds in plaintiff's chain of title were to be construed by the court as matter of law; Hunt v. Mo. Pacific Ry. Co., 75 Mo. 252, 255; Hafner v. Cotton, 136 Mo. 216, 224; Willi v. Dryden, 52 Mo. 319, 322; Waddell v. Williams, 50 Mo. 216, 219.

14. Plaintiff had actual possession of a portion of her lots, and a legal title to the whole, and exercised the usual acts of ownership over the whole of them to the river. Her actual possession of a part of them, with siezin of the whole drew to her the constructive possession of the whole of them, until she was actually ousted by defendant, in 1891, of the premises in controversy; Bradley v. West, 60 Mo. 33. She never laid out or dedicated any street or streets through them (nor was she made a party by service of process to any legal proceeding, nor was any judgment rendered for that purpose); but if she had done so, it did not separate them into different tracts nor de-

prive her of the possession or exercise of control over them as a tract, by virtue of the actual possession she had of them by reason of the houses on the west end of them; Williams v. Ballance, 23 Ill. 193, 197, affirmed, Hassett v. Ridgway, 49 Ill. 197, 205-206; Janes v. Patterson, 62 Ga. 527, 531; Hubbard v. Austin, 11 Vt. 129, 133, and see Campbell v. Laclede Gas Light Co., 84 Mo. 352, 372-3. Ejectment is a proper remedy for said ouster of plaintiff, by defendant; Anderson v. St. Louis, 47 Mo. 479, 486; Armstrong v. St. Louis, 69 Mo. 309, 311; McCarty v. Clark County, 101 Mo. 179, 182. And the fact that the railroad company, either as an original trespasser or by permission of defendant, given in any manner, built a track across these premises, did not change this remedy. Plaintiff did not in any manner induce the trespass on these premises, whichever one of them committed it originally, nor induce the railroad company to build such track, nor did plaintiff have any notice that the permission, if any, would be given or that the railroad track would be built. But if she had been specially notified of the latter fact, and failed to take any notice of it, it would not have affected her right to maintain ejectment against either or both of them, if the railroad were a party to this action; Walker v. Chicago, Rock Island and Pac. Ry. Co., 57 Mo. 275; Bradley v. Mo. Pacific Ry. Co., 91 Mo. 493, 499; Childs v. K. C. St. J. & B. C. Ry. Co., 117 Mo. 414, 432; Scarritt v. K. C. & S. Ry. Co., 127 Mo. 298, 303.

15. Defendant by its answer, alleges that it had been in the adverse possession of the premises in controversy for ten years next prior to the filing of the petition herein (the latter being the time of the commencement of this suit; South Mo. Lumber Co. v. Wright, 114 Mo. 326, 331; McGrath v. St. Louis, K. C. & C. Ry. Co., 128 Mo. 1, 6). This is a conclusive admission of possession of the whole of them, and defendant can not deny such possession. Ramsey v. Henderson, 91 Mo. 560, 564; Pike v. Martindale, 91 Mo. 268, 286; Wright v. Butler, 64 Mo. 165, 166; Tomlinson v. Lynch, 32 Mo. 160, 169; McCarty v. Clark County, 101 Mo. 179, 183; Tatum v.

City of St. Louis, 125 Mo. 647, 652. Defendant occupies the same position as if it had entered its appearance to defend its tenants, and took upon itself the burden of the defense, thereby making the possession its own; Warren v. Carter, 92 Mo. 288, 292; Hill v. Atterbury, 88 Mo. 114, 117. Moreover, defendant claimed on the trial of this cause, a dedication of the premises in controversy, by plaintiff, to defendant, and it is thereby estopped from disputing even the title of plaintiff to them; City v. Draper, 36 Mo. 332, 336; McGinnis v. St. Louis, 157 Mo. 191, 195; Fellows v. Wise, 49 Mo. 350, 352; Brown v. Brown, 45 Mo. 412, 414; Miller v. Hardin, 64 Mo. 545, 546; Milling Co. v. Riley, 133 Mo. 574, 584.

16. Plaintiff's occupation by tenants of the western end of these lots, and her continued acts, through her agents, in looking after and caring for the premises in controversy to the time that defendant ousted her, as shown by the undisputed testimony disproves any intention on her part to dedicate them, and the agreement in regard to a division line between Mary L. Tyler and the Buchanan heirs, endorsed on a private unrecorded plat attached to an abstract of title, extends the line between them to the river, and clearly negatives any intention on their part to make a dedication, otherwise they would have called for the Western Wharf line as a terminus, and to claim that because plaintiff was compelled to read it in evidence in an action to recover these premises, in order to locate them, whatever her attorneys might have said in regard to it, is extremely far fetched and clearly untenable. The latter line on said plat marks the western boundary of the wharf, as established by City Ordinance No. 5403 (but unopened and unused as such), by which defendant proposed and still proposes to condemn and pay for said premises, and it was placed on the plat by the abstractor for the information of the parties for whom he made the plat, and without it the abstract would have been imperfect. The lines on a plat, except in the absence of any words on it to indicate the intention of the maker as to a dedication, are not evidence of such intent, but the

words endorsed on it always control in that respect, and marks on a public recorded plat, in order to evidence an intention to dedicate, must be of something exclusively and equivocally public, therefore the mark of "wharf" on this plat if a public one and unexplained by the agreement endorsed on it, would not constitute a dedication, as a private wharf might have been intended; Palen v. Ocean City, 64 N. J. Law, 669, 670-673; Hurley v. Mississippi & Rum River Boom Co., 34 Minn. 143, 147; Yates v. Milwaukee, 10 Wall. (77 U. S.) 498, 499, 506-507; Domer v. St. Paul & Chicago Ry. Co., 23 Minn. 271, 275; Cowles v. Gray, 14 Iowa, 1, 4; Municipality No. 2 v. Orleans Cotton Press, 18 La. 122, 236. And see Hennepen County v. Dayton, 17 Minn, 260, 261 (County Block); Scott v. City of Des Moines, 64 Iowa 438, 444 (Market Square); City of Pella v. Scholte, 24 Iowa 283, 288 (Garden Square); David v. Municipality No. 2, 14 La. Ann. 872 (Market); Saulet v. City of New Orleans, 10 La. Ann. 81, 82; Municipality No. 2 v. Palfrey, 7 La. Ann. 497; Attorney-General v. Whitney, 137 Mass. 450. The last three cases involved unmarked triangular pieces of land, long neglected by their respective owners.

The concession of plaintiff's attorneys in regard to this agreement and plat, obtained in an evident attempt to surprise them into what was supposed to be a damaging admission, and persistently put forward by defendant's attorneys as having great, but unexplained weight in favor of defendant, merely conceded the legal effect of them, and could have no other force, as neither a party nor his attorney can concede or admit away the law in his case; Crockett v. Morrison, 11 Mo. 3, 5; State ex rel. v. Smith, 150 Mo. 75, 88. The survey ordered by Mr. Collins for his own use in ousting squatters, of a small portion of plaintiff's lots, has no bearing whatever on this case.

17. The defense of an outstanding title and adverse possession in the Buchanan heirs, under the Easton patent, and mesne conveyances failed completely under the evidence, for if there had been an actual occupancy by them of the premises sued for, defendant's testimony showed there was no intention

to claim title beyond the true line, and therefore the statute of limitations never began to run against plaintiff; McCabe v. Bruere, 153 Mo. 1, 5; Brummel v. Harris, 148 Mo. 430, 440, 442; Ernsting v. Gleason, 137 Mo. 594, 597; McWilliams v. Samuel 123 Mo. 659, 662; Shotwell v. Gordon, 121 Mo. 482, 484, and further showed that there was no possession of the premises in controversy, and the agreement for a division line and acquiescence in it, as we have seen, settled that question. The little use made of the premises in controversy, for the purpose of navigation, by the general public, was made under legal right to so use them; O'Fallon v. Dagget, 4 Mo. 343, 346; and this use instead of being adverse to plaintiff, prevented any adverse possession or use of them by defendant; Green vs. Chelsea, 24 Pick. (41 Mass.), 71, 79; State v. Wilson, 42 Me. 9, 26. Building the dike in front of them did not constitute adverse possession of these premises; Tatum v. St. Louis, 125 Mo. 647, 657; Whyte v. St. Louis, 153 Mo. 80, 88. It was built out in the river, to protect the harbor, under an Act of the Legislature; Laws Mo., 1844-5, p. 90; Myers v. City, 82 Mo., 367, 376. And the use made of them by defendant, if it had been for wharf, instead of leasing them for a lumber yard, was for less than four years prior to the institution of this suit, and in order to have affected the title, it must have been continued for the full period of ten years; Field v. Mark, 125 Mo. 502, 516; Rosenberger v. Miller, 61 Mo. App. 422, 426.

18. Having failed in the defense of an outstanding title and adverse possession in the Buchanan heirs, counsel for defendant, evidently as an after thought, attempted to defend on the ground of estoppel, or dedication by matters *in pais*, which is the same; McGinnis v. St. Louis, 157 Mo. 191, 195. This defense is utterly inconsistent with the former named defenses and should not be permitted; but if it were proper, estoppel is not pleaded in the answer, and in order to make it available as a defense, it is necessary to specially plead it, in ejectment, under the Missouri practice; Casler v. Gray, 159 Mo. 588, 595; Throckmorton v. Pence, 121 Mo. 50, 60; Avery v. Railroad, 113 Mo.

561, 568; Bray v. Marshal, 75 Mo. 327, 330. It is not available as a defense, unless pleaded, even where the evidence tends to support it; Electric Ry. Co. v. Curry, 154 Mo. 10, 20. And see Sanders v. Chattrand, 159 Mo. 544, 558; Cockrill v. Hutchinson, 135 Mo. 67, 75.

19. But if estoppel had been specially pleaded in the answer, there is no evidence, which must be substantial evidence, to prove it, or to sustain a verdict for defendant if one had been rendered in its favor. And the same is true of the facts stated in the opinion of Judge Adams, in the ejectment case of King et al., v. The City of St. Louis, printed in the brief of defendant on motion to dismiss or affirm this case. 46-59, if that could be considered herein. A party to be estopped must be informed of the facts in the case, and must then do some positive act or make some positive statement, intending that it should be acted on by the party to whom it is made, and the latter must act in consequence thereof and do what would otherwise be to his injury, and make it inequitable and unjust for the first party to repudiate his act or statement; Scrutchfield v. Sauter, 119 Mo. 615, 623; Blodgett v. Perry, 97 Mo. 263, 272; St. Louis v. Schulenberg-Boeckler Lumber Co., 98 Mo. 613, 617.

20. There was no estoppel in building the dike in front of these premises, but it might have furnished the basis of an action for damages; St. Louis v. Meyers, 8 Mo. App. 266, 274, affirmed, 82 Mo. 367, 378. The proceedings to open Kennett formerly Hall Street, do not purport to affect the premises in controversy, but if they did, there was no judgment rendered by the Land Commissioner, and the return of the notice in the case is void on two grounds, having but one copy for two defendants and making one person a member of two families; Stewart v. Stringer, 41 Mo. 400, 404, and see Gamasche v. Smith, 60 Mo. App. 161, 163. And the deed by the Marshal under them is void, in addition to the foregoing, as being a portion of the lots with no description sufficient to identify which portion of them was intended to be conveyed;

Jones v. Carter, 56 Mo. 403, 405.

The redemption of the premises from the void sale under them could not validate the proceedings; Heidelburg v. St. Francois County, 100 Mo. 69, 76; Kiley v. Oppenheimer, 55 Mo. 374, 376; State v. Bank, 45 Mo. 528, 541. Aside from this question, there is no estoppel in buying peace and accepting a deed from an adverse claimant of land; Macklot v. DuBrevil, 9 Mo. 477, 480; Landes v. Perkins, 12 Mo. 238, 258; Blair v. Smith, 16 Mo. 273, 280; Cutter v. Waddingham, 33 Mo. 269, 282; Wilcoxon v. Osborn, 77 Mo. 621, 629; Cummings v. Powell, 97 Mo. 524, 536. Nor can there be any estoppel under a void deed; Douthitt v. Stinson, 63 Mo. 268, 279; Reinhard v. Va. Lead Mining Co., 107 Mo. 616, 627.

21. A person can not be deprived of his property except by his consent or by due process of law. No process of law is claimed in this case, but instead, a dedication by the owner. In order to constitute such dedication the intent to do so on the part of the owner must clearly appear, and "the proof ought to be so cogent, persuasive and full as to leave no reasonable doubt of the owner's intent and consent. The conduct and acts relied on to establish the intent of the owner should be inconsistent and irreconcilable with any construction except such consent;" Bauman v. Boeckler, 119 Mo. 189, 199; Barker v. Squire, 143 Mo. 92, 98; Baker v. Vandenberg, 99 Mo. 378, 391; and where acts and declarations of an owner are relied on for this purpose they must indicate "the intent to dedicate his land to public use, must be unmistakable in their purpose and decisive of their character. There must be a clear intention on the part of the owner to devote it to public use;" Baker v. Vandenberg, 99 Mo. 378, 391; Vossen v. Dautel, 116 Mo. 379, 384; Los Angelos v. Kysor, 125 Cal. 463, 465; Eureka v. Mackay, 123 Cal. 666, 670; People v. Beaubien, 2 Douglas, 256, 271; Yates v. Milwaukee, 10 Wall. (77 U. S.), 498, 506, 507.

22. In Anderson v. City of St. Louis, 47 Mo. 479, a

case involving this North Wharf, established by said Ordinance No. 5403, but unopened, the plaintiffs attempted to enjoin the defendants from taking possession of a portion of it and from disturbing them in the peaceable possession of their land without having legally condemned it. The court held that the claim of defendant was illegal and void but refused plaintiffs relief on the ground that it was a trespass sought to be enjoined that might be compensated in damages and for which ejectment would lie; p. 86. And see Leslie v. City of St. Louis, 47 Mo. 474. This decision did not affect the City Blocks laid out by the Street Department, and the Assessor's Office, having previously adopted them for the purpose of assessment continued to so use them, and did not assess these premises. Plaintiff was not consulted and had no control over this matter, and it is now urged by defendant as a dedication of her property, with no evidence to show that she ever knew of such claim, much less that she consented to a dedication of her land.

23. The acts relied on as an estoppel to show dedication, are, failure to return the premises sued for with the remainder of the lots, to be assessed for taxation, failure to pay taxes on them, and payment of tax bills on the portion of the lots lying west of them on which the lots are described as bounded on the east by the wharf. The first is entirely without evidence to support it as there were no returns for assessment either by or for her, offered in evidence. The payment of the tax bills bounding the property on which payment was made, on the east by the wharf, if made by plaintiff, was not a dedication; City v. Wetzel, 110 Mo. 260, 264. These were made by agents who retained the tax bills. If they were otherwise competent evidence on the question they would have no tendency to prove a dedication by plaintiff, without evidence, and there is none, that they had authority from her to make it; California Navigation and Improvement Company v. Union Transportation Company, 126 Cal. 433, 441; Niagara Falls Suspension Bridge Co. v. Bachman, 66 N. Y. 261, 270, besides

the acts of said agents in caring for them, disproved any intention on their part, to make such dedication. The payment of said tax bills by plaintiff in person, if ordinarily a dedication, would have no tendency in this case to prove an intent on her part to dedicate the premises in controversy for wharf, as defendant by Ordinance No. 5403, established them as such, proposed and still proposes by said ordinance to condemn and pay for them for that purpose, made the plats and marks on them and the tax bills and failed or refused to assess them, and these facts evidence no intention on her part to thereby dedicate them; Avery v. Stewart, 1 Cush. (55 Mass.), 496, 501; even if she had so bounded them in a deed, whatever might have been its effect as between her and her grantee; Brooklyn Street, 118 Pa. St. 640, 646; In re Wayne Avenue, 124 Pa. St. 135, 137. And see Mayor v. Sackett, 44 N. J. Law, 428, 429.

24. Aside from the foregoing the boundary in the tax bills is a mere reference, made by defendant, simply for the purpose of location or description of the premises assessed, and if inserted by plaintiff would not have been a dedication. An owner is not bound by a plat of his land made by another person, and an unrecorded private plat, made by an owner, is not evidence of a dedication of any part of the land platted without a sale of lots in accordance with it; Heitz v. City, 110 Mo. 618, 625; Thurston v. City, 51 Mo. 510, 512. In the latter case, the question of dedication rests entirely upon the implied covenant with the purchaser, contained in the deed, that there is such a highway there; Whyte v. St. Louis, 153 Mo. 80, 90.

"Mere reference to street for purpose of description. It must clearly appear that the parties to the deed recognize the street or road as a public one, either already in use or as to which, as far as the owner of the land is concerned, the dedication is complete; a mere reference to a street or road, or a recital of its existence simply for purposes of location and description or to give the boundaries of the land conveyed, is

not sufficient;" 2nd Ed. 9 Am. & Eng. Ency. of Law 56 and note 1; Id. 58 and note 1, p. 59, to which we add the cases of Putnam v. Walker, 37 Mo. 600, where an alley was called for, but did not constitute a dedication; Pierce v. Chamberlain, 82 Mo. 618, 621, where a 40 foot strip of land bounding the land conveyed was deeded for a street, and it was held not to be a complete dedication until accepted and used for the purpose, and Vossen v. Dautel, 116 Mo. 379-384, where a deed called for the Schuetz road as a boundary, and it was held not to be a dedication of it, but that it was a private road, and not a public one, and the same in People v. Beaubien, 2 Doug. (Mich.), 256, 283.

25. Failure to pay taxes on, and neglect of property for many years, do not constitute a dedication of it to public use. The following contains the substance of some of the best considered cases on this question.

In Attorney General v. Whitney, 137 Mass. 450, a triangular piece of land was shown on a plat made by the owner and colored green on the plat, and the owner treated the piece of land as if it were to be kept open, did not enumerate it on a schedule of his property, sold lots by a plan on which it appeared as an open space, and the City filled up the land at its own expense and for many years did not tax it, and these facts were adjudged insufficient to prove a dedication of it to the public.

In California Navigation & Improvement Co. v. Union Transportation Co., 126 Cal. 433, a strip of land 150 feet wide and 1000 feet long, adjacent to San Joaquin river, was claimed as having been dedicated by a manager and agent; held, that the appointment of an agent to manage, does not imply authority to dedicate, and his authority to do so must be shown. To the same effect Niag. Falls Sus. Bridge Co. v. Bachman, 66 N. Y. 261, 270.

In Municipality No. 2 v. Palfrey, 7 La. Ann. 497, and Hiques v. Bujac, Id. 498, an irregular shaped piece of ground on a plat, unmarked, with a cessation of any use of it as pri-

vate property, it being low and marshy, and no claim made to it nor payment of taxes on it for 40 or 50 years, when no use was made of it inconsistent or adverse to the owner, does not constitute a dedication. It might not have been assessed for taxes.

In City v. Lecraw, 17 How. (58 U. S.), 426, flats belonging to the City of Boston, which, while covered with water all persons might use in navigation, were so used by the public down to 1850, after which and the first use made of them by the City, it built a sewer on them. Held no dedication to the public, and that a man can not lose title to his land by leaving it in a state of nature, or forfeit it by non-user, and that there was no evidence of dedication in the case to submit to the jury. And see State v. Wilson, 42 Me. 9.

In Green v. Chelsea, 41 Mass. (24 Pick.) 71, devisee of flats never enclosed, of which no one had exclusive possession or claimed ownership (devisor doubting whether his deed included them), but used by all persons coming by land or water who had occasion to pass over them or make some brief use of them, by landing wood &c., thereon. Held, to be vacant, and that the devisee acquired a seizin without an entry. Further, that such uses by individuals did not tend to show possession by the town, but on the contrary were adverse to such claim, and the omission by the owner to fence such flats bounding on the sea, and such use of them by others, did not prove a dedication of them to the public.

In Yates v. Milwaukee, 10 Wall. (77 U. S.), 498, an owner had platted his land into blocks and lots so that a line of the lots was out in the lake at the time the plat was made, but the water subsequently subsided beyond it, and it was held that this was not a dedication of the land beyond the lot lines, notwithstanding the Supreme Court of the State (Wisconsin) had so held, and also that dedication was a matter of common law, and this court was therefore not bound by the ruling of the State Court; pp. 506, 507.

26. We do not deem it necessary to pursue these cita-

tions further, and shall close these points with a brief notice of Skrainka v. Allen, 2 Mo. App. 387, 396, relied on by defendants. There are three very marked and controlling distinctions between the facts in the latter case and the one at bar, which are, that Mr. Allen made and filed the plat himself, on which the street was laid out, therefore he was informed of all the facts in the case; and the next is, that there was no proposition pending on the part of the City to take and condemn the property, and his lot was returned for assessment bounded by the street and he permitted the Contractor to pave the alley abutting on the street, for the payment of which a special tax bill was issued without notice or protest. This was held to be evidence tending to prove a dedication. Further, the case was tried on an agreed statement of facts, pp. 388, 394, and the authority of the agent to make a dedication impliedly admitted, and it was not questioned.

27. The plaintiff showed a perfect legal title to the premises sued for, by evidence given in her own behalf and it was corroborated by the evidence for the defendant. Indeed the defendant claimed title by dedication under her and thereby, as we have seen, estopped itself from disputing her title. This left questions of fact only, to be decided by the court, sitting as a jury, the burden to establish them being on defendant. The instructions given by the court fairly presented the questions, and the court rendered a verdict for plaintiff. The form of the instructions in such case is not material. It may be a direction to find for one of the parties, and it is a mere verdict or finding of facts, and if sustained by substantial evidence, it will not be disturbed; Bailey v. Gunning, 155 Mo. 682, 683; Hess v. Clark, 11 Mo. App. 492, 493; Dyer v. Reitz, 14 Mo. App. 45, 49. In trials before the court instructions generally are of little use except to show the theory on which the court tried the case; Cooper v. Ord, 60 Mo. 420, 421; Cook v. Farrah, 105 Mo. 492, 508; Benne v. Benne, 56 Mo. App. 504, 508; Perkins v. School District, 61 Mo. App. 512, 514. When a verdict, as in this case, is clearly for

the right party it should be sustained whatever error may have been committed on the trial; Orth v. Dorschlein, 32 Mo. 366, 368; Jackson v. Magruder, 51 Mo. 55, 59; Vaughan v. Daniel, 98 Mo. 230, 232; Williams v. Mitchell, 112 Mo. 300, 315; Brobst v. Brock, 10 Wall. (77 U. S.), 519, 528. And a verdict on facts is conclusive in favor of the party for whom it is rendered; Minton v. Steele, 125 Mo. 181, 190; Grant v. Moon, 128 Mo. 43, 49; Kahn v. Cotton, 136 Mo. 216, 225; Bray v. Kemp, 113 Mo. 552, 554; Brown v. Brown, 106 Mo. 611, 616.

ARGUMENT.

We shall not make an extended argument on the foregoing, believing that few of the points herein before made require any. The cases cited to point 8, on the question of a meander line, show that various pieces of land laid between the meander line and the water, varying from about twenty-five acres of land in addition to a large sand beach between it and the lake in the case of Mitchell v. Smale, 140 U. S. 406, 415, which passed with a fractional quarter section of land containing but 4.53 acres within its meander lines, down to a sandbar, in the case of Stephenson v. Goff, 10 Rob., 99, 100, where the survey commenced at a point above and reached a place on the bank of the river, and then ran along the edge of a mud and sandbar, as near as practicable (just as in the case at bar), so as to include all of the land susceptible of ownership. The sandbar in the case (10 Rob.) was overflowed every year, at the time of making the survey (just as in the case at bar it must have been), in times of moderate high water. At a low stage of water, the distance from the main land across the bar to the water was nearly half a mile. There were some ridges on the bar, some places higher than others, on which were trees—small cotton-wood and willows. It was held in the case, that

the sand bar was not land; that the land subsequently formed of it passed to the owner of the survey, as alluvion, and the court reversed a judgment in favor of the defendant, who was a tresspasser upon it, and entered judgment in favor of the plaintiff, who owned the survey, and quieted his title. In all of the cases found in the course of a very laborious and lengthy examination, not one has been found that throws a shadow of doubt on the correctness of this decision in 10 Rob., but all found having any bearing on it support it, save the decision in the case at bar by the Supreme Court of Missouri, and the *agri limitati* of the Romans.

It is claimed that this eastern line is a fixed line. All surveyed lines are necessarily fixed lines, as a compass will not follow a circle, and surveyors do not wade out in the water to run lines; Wood v. Appal, 63 Pa. St. 210, 221, but they do not limit the grant on rivers. The doctrine of a fixed line is the *agri limitati* of the Romans. These were grants of conquered territory to veteran soldiers retired from active service. They were squares containing thirty-three or one hundred and thirty-three acres and their boundaries, called *limites,* were marked by a slip of land left for the purpose untouched by cultivation, as balks or highways, and when they bordered on streams, they were not entitled as other riparian lands were, to accretions, but confined to the lines.

This is contrary to the common law; Hardin v. Jordan, 140 U. S. 371, 399. The nearest to such a doctrine in our law is in the case of Smith v. St. Louis Public Schools, 30 Mo. 290, 301, where the tract was bounded on the east by a street but wherein it is plainly shown that if the line had varied with the river, instead of being a straight one along the street, the result would have been otherwise (p. 309), so that the meander line in this case, down the bank, with the meanders of the river, between high and low-water mark, means a line which follows the sinuosities of the river, makes the river the boundary and comes clearly within the many rulings and carries riparian rights; Turner v. Parker, 14 Or. 340; Schurmeier v. Railroad Co., 10 Minn. 82, 101.

The recitals in the beginning of this patent, state that a Spanish concession was made to Louis Labeaume, in 1799, of about 360 arpens of land, surveyed in the same year to the amount of 374 Arpens, by Antoine Soulard, Surveyor General, a confirmation of said claim to said Labeaume by the old Board of Commissioners in September, 1810, the issuance of a patent certificate on said confirmation, in 1811, a decision of the Secretary of the Interior, in July, 1851, that "those claiming under Labeaume are entitled to a patent for the land according to Soulard's survey and Labeaume's possession, and that the lines of said Soulard's Survey have been retraced in accordance with the decision referred to, as appears by the plat and transcript of survey, numbered three thousand three hundred and thirty-three, which accompany said patent certificate." It further states the approval of the latter plat and survey and that it contains 339.68 acres, and said plat and survey are copied in the patent. The remarks in the patent, which immediately follow the field notes contained therein, the usual place for stating boundaries in conveyances, and by which any inaccuracies or uncertainties in the detailed description are usually corrected, are found not only to place the fourteen acres of accretions stated therein to have been formed to Soulard's survey, within U. S. Survey No. 3333, to aid in making up the 21.52 acres of excess of area of the latter over the former found to exist, not only include all of the land then formed, to the river, but they expressly bound the former by the Mississippi River on the East, and by necessary implication the latter also, thus conforming the survey to the direction of the Secretary of the Interior, to retrace the lines of Soulard's survey, and his decision that they had been so retraced, even if there was anything in the patent, which there is not, inconsistent therewith. Clearly this call in the patent for the River as the Eastern boundary, carried riparian rights, as it controls courses, distances and quantity, and the corners, monuments and meander lines of a survey; Gould on Waters, Sec. 194.

The remarks also distinctly state that the accretions are rapidly advancing, the clear inference from which is that they are to be included also, as they form.

The boundaries of said plat and survey No. 3333, the Secretary of the Interior ordered to be a retracing of the lines of Soulard's survey (thus making them the original plat and survey), and approved them as a retracing of the lines of the same, in accordance with the decision referred to, and an inspection of Soulard's plat and survey leaves no possible doubt that it was bounded by the Mississippi River on the East, and it was so held, and that U. S. Survey No. 3333 retraced its lines and that the patent was based on the former survey, in West v. Cochran, 17 How. (58 U. S.), 403, 410; Maguire v. Tyler, 8 Wall. (75 U. S.), 650, 655, and Tyler v. Wells, 2 M. A. 526, affirmed 70 Mo. 33.

But if there had been no adjudication by the Secretary of the Interior, nor the Courts, that the patent was for Soulard's survey, nor that the lines of the latter were merely retraced in U. S. Survey No. 3333, and no specific call in the patent, as there is, for the Mississippi River as a boundary of the tract on the East, and if there had, in fact, been fourteen acres of land, as held in this case, by the Supreme Court of Missouri, East of the Eastern line meandered along the River on the plat of U. S. Survey No. 3333, and between it and the River, the plat shows no land between said line and the river, merely a sand-bar, plainly marked as part of the river, and was so both in law and fact—said line is a meander line only, not the boundary line, and the river is the boundary of the tract, on the East, by virtue of said plat, and the patent gave the grantees riparian rights.

The word riparian is derived from latin ripa, a river bank, and denotes such rights as follow or are connected with the ownership of the bank; Gould on Waters, sec. 148. The call in this case goes beyond the bank; between high and low water mark, and includes part of the river bed. Where the original

concession, the confirmation, and the survey, distinctly called for the bank of the Mississippi River as the Eastern boundary of the land granted and confirmed, it was held; that it is sufficient "to carry all the accretions made thereon since the origin of the title, there is not the least room for doubt;" Le Beau v. Gaven, 37 Mo. 556, 557-558. Unquestionably the greater call in this patent includes the less, and vests riparian rights under it, by reason of this call, as there is no limitation in this patent.

Grants by the United States of its public lands bounded on streams and other waters, made without reservation or restriction, are construed most favorably to the grantee, and that all land that might pass by it, actually passed; Gould on Waters, Secs. 195-6-7; Angell on Water Courses, Sec. 23; Grand Rapids & Indiana Railroad Co. v. Butler, 159 U. S. 87, 92.

The Labeaume and Easton patents, the former for U. S. Survey No. 3333, from which plaintiff derives title, and the latter for U. S. Survey No. 2042, from which George Buchanan and his heirs derive title, adjoin each other, and are shown to do so on the plat of the former survey, contained in the Labeaume patent, and point F, at the mouth of Rocky Branch, was their common termination at the river on it. The fact that both of them went to the river is emphasized in the call in the Easton patent read in evidence by defendant, which is simply to run down Rocky Branch to its mouth, which could not be reached without going to the river, and from there up the river. No mention is made in the latter patent of any sand beach or bar, in the river at that point. This in itself is conclusive evidence that point "F" in survey No. 3333, was the river, even if the mouth of Rocky Branch, the river or its bank, or high or low water mark had not been mentioned in the Labeaume patent in connection with it, and the Eastern line of the latter survey, had not been called a Meander line; Devlin on Deeds, Sec. 1028 b. vol. 2 (2nd Ed.); Norcross v. Griffith, 65 Wis. 599-609. The latter decision is very elab-

orate and examines the authorities at great length. In the case of St. Clair County v. Lovingston, 23 Wall. (90 U. S.), 46, 65, where the survey commented on commenced on the bank of the river, thence to a point in the river, and a final call to the beginning point, and the line between the points on the river was a straight one, instead of varying with the River, as in this case, it is said: "No sensible reason can be imagined for having the two corners on the river and the intermediate line deflect from it." As the N. eastern corner of U. S. Survey 3333, is expressed to be point F, at the mouth of Rocky Branch, and the South eastern corner is expressed to be a point on the right bank of the river, between high and low water mark, the two cases last cited effectually dispose of the argument that the eastern line of U. S. survey 3333, is a fixed and not a meander line on the river, and are conclusive that the river is the eastern boundary of it.

To briefly review the cases relied on in the opinion of the Supreme Court of Missouri, herein. Dunlap v. Stetson, 4 Mason 349, so confidently relied on, was based on the following call: "Beginning at a stake on the west bank of the Penobscot river * * * thence * * * to a stake and stone on the same bank of the same river; thence running on the western bank of said river to high-water mark;" p. 365.

This call was held to be restrictive to the front line of the bank itself, and that the title to the flats, between the bank and the river, did not pass. This ruling is in accordance with the one in Howard v. Ingersoll, 13 How. (54 U. S.), 381, 422, where it was held that the call for the "western bank" of the river, limited the effect of the grant and confined it to the western edge or bank, which would not have been the case if the word "western" had not been inserted therein. Gould on Waters, secs, 197 and 200; Angell on Water Courses, secs. 24 and 29; note. There is no such limiting call in the present patent, a point overlooked in said opinion, but the call is for a meander line, which made the river the boundary; Turner v. Parker, 14 Or. 340. Such a limitation we have seen would

not deprive plaintiffs of the accretions. Another point in the decision of the case of Dunlap v. Stetson, that was overlooked in said opinion, is the following:

"What is taken from the bank is an imperceptible increment to the flats, and passes to the owner of it, in the same manner as if there had been a like increment to the bank, it would have passed to the riparian (bank) proprietor;" p. 366; Hindson v. Ashby, 1 Ch. L. R. 1896, 78.

The application of the latter proposition in this case would have necessitated a different ruling.

In the case of Cook v. McClure, 58 N. Y. 437, the call is for "a stake near the high-water mark of the pond of the grist mill, thence * * * along the high-water mark of said pond." The pond was an artificial one, and the Court held that the call was a limitation to high-water mark;" p. 440. It further held that the reason given in cases where the boundary is upon the banks of streams, that it should go to low-water mark, so that the party should not be cut off from the water, did not exist in the case; p. 441. Neither the facts nor the law in either of these cases commented on, furnish any authority for the ruling herein. Besides, the cases from 4 Mason, 349; 13 How. (54 U. S.), 422; 58 N. Y. 437, as we have seen, are really in favor of plaintiffs; but if they were against plaintiffs, they can not have any application under the system of U. S. Surveys, established by Acts of Congress for the Western States; Gould on Waters, sec. 76, and cases cited on the question of meander lines to point 8.

(Other cases heretofore cited and relied upon by defendant's attorneys, are those of Child v. Starl, 4 Hill, 369, where the call was for the shore of the river, and it was held to go to low water mark; Bradford v. Cressy, 45 Maine, 9, called for the west bank of the creek; Daniels v. R. R., 20 N. H., 85, called for the easterly bank; and Healy v. McCormack, 3 Kernan 296, called for the bank of the creek and it was held to go to low water mark.)

The case of Ellinger v. Railroad, 112 Mo. 525, is much

the same as Smith v. St. Louis Public Schools, 30 Mo. 290, where the grant was bounded by a street, as the land in the former case, had been platted into blocks and streets by Carondelet, and Water street laid out between the lot purchased by the plaintiff, on which it fronted, and the river. Besides, the plat and dedication by Carondelet, in 1832, of the property, either vested the title in fee to Water street in the county, under sec. 3, p. 763, R. S. Mo., 1825, or the eastern half of it remained in Carondelet. In the former case the county owned the accretions, and in the latter case, as the purchaser of a lot bounded by a street takes title subject to the easement, only to the center of the street, Carondelet or its successor, the city of St. Louis, owned them; City v. Railroad, 114 Mo. 13; Banks v. Ogden, 2 Wall. (69 U. S.), 57, 69.

The decision in Smith v. City of St. Louis, 21 Mo. 36, is not the law in this case, as the Act of Congress approved June 6th, 1874, is a grant for this confirmation subsequent to the issue of the patent herein and to said decision, and the title granted by said act is in no manner affected by the estoppel in that case against the party by reason of his having accepted a survey that did not include all of the confirmation. Said act of Congress passed the title to all land in the confirmation in this case, that was omitted from the patent, if any was omitted, and vested riparian rights in the grantees. This Act is curative, remedial and in favor of justice, and it should be liberally construed, and the Supreme Court of Missouri erred in denying plaintiff any rights under it if the patent did not vest riparian rights.

The attempt to distinguish the plat in this case from the one in Shelton v. Maupin, 16 Mo. 126, is based on the assumed fact that the dotted line in the plat of U. S. Survey No. 3333, crossing the bar at the n. e. corner of the survey, from the point F, marks the northern line of the city and not of the survey, and that there is no evidence that the lines of this survey ever ran to the river. The former is a mistake, for the reason that the survey does not purport to lay down any north line of the

city or even mention one in the field notes. It only fixes the northern termination of the northern boundary line of it. From this point the city line runs due east, City Charter, sec. 1, p. 155, Laws Mo. 1850-1, and the northern line of the survey, of which the dotted line is an extension, runs north 87 degrees and thirty minutes east (an angle of 2 1-2 degrees north of east) at 5 chains and 46 links, to the point F, and therefore can not be the northern line of the city; besides, it is not necessary to plaintiff's case that the line be so extended on the plat, as the survey stopped at point F, the river. The dotted line shows where the survey line would have run if the sand bar had been land.

The statement that in Shelton v. Maupin it appeared that the lines ran to the river is a mistake also, as it is expressly stated therein that the purchase of the land sued for was made by the defendant upon the idea that the lines of the fractional survey did not extend to the Missouri River, and that the whole question in the case was, whether if it was true that the surveyor, in running the section lines in 1817, did not in fact extend the south and west lines to the river; or if since that survey accretions had formed in front of the fraction, so that the original corners established on the bank of the river were then distant from the stream, the sale to plaintiff, in 1844, would pass the land to the river, and it was held that as the plat showed the river as a boundary, plaintiffs took title to the river, and this ruling is specifically based on the effect of the plat, p. 128, and not that the survey lines extended to the river.

Another mistake in the opinion herein is in treating the ornamental pink shading inside the survey line marked on the plat, used by surveyors to call attention to the line surveyed, instead of the black line, as the survey line. And under the opinion the meander line would have been equally fixed and permanent if it had been drawn at low water mark, or in the water, and the result the same, as it applies the *agri limitati* of the Romans; Hardin v. Jordan, 140 U. S. 371, 398.

It was also by a mistake in locating these 14 acres of accretions to Soulard's survey, east of the eastern meander line of said survey No. 3333, and between said meander line and the river (instead of west of it, as the patent locates them), that the Court, in the opinion herein, based its rulings that the meander line of said survey was a fixed line, and that there were fourteen acres of land between said line and the river, and that the patent therefore did not give riparian rights. The incorrectness of the latter ruling has been shown, and it could be sustained only by reversing the plain and simple rule of addition; that is, by deciding that by adding to whatever little mistake Soulard might have made in calculating the area of his survey, which error could not have exceeded about seven acres, to about fourteen acres of accretions to Soulard's survey (as the patent plainly does, in order to account for the excess of 21.52 acres in survey No. 3333, over the area of land contained in Soulard's survey, according to his calculation), the east line of survey No. 3333, instead of being moved east to the River, to contain this larger quantity, would remain the same as Soulard's east line, notwithstanding it was located east of Soulard's original line for the express purpose of including these fourteen acres in U. S. Survey No. 3333, and that by no possibility could these fourteen acres be included in the latter survey without locating its east line east of Soulard's and on the river. How such a mistake could have occurred is inexplicable, as there is but one fourteen-acre tract (and that is of accretions to Soulard's survey) mentioned in the patent. It may have been that the Court mistook the sand beach, formed into accretions (which the patent states were then rapidly advancing) since survey No. 3333 was executed, for the fourteen acres. But this does not seem probable, as the former sand beach now formed into land contains over 94, instead of fourteen acres.

We do not deem it necessary to review the questions of an outstanding title in the Buchanan heirs, or of an adverse possession of the premises, as both of these not only failed of

proof, but were conclusively disproved, the latter by the defendant's evidence, and the former it is estopped from claiming by reason of having also claimed a dedication to it by plaintiff. The latter defense is utterly inconsistent with the first, and should not be permitted.

The answer in this case is a general denial, adverse possession and adverse user as a wharf, which are the same defenses, for the statutory period of ten years. This special plea added nothing to the general denial, as the defenses of adverse possession and an outstanding title could have been made under it, and the special plea might have been stricken out on motion of plaintiff without affecting their defense. But the rule under the Missouri practice, as we have seen by the case cited, is firmly established that in order to be available as a defense, estoppel must be specially pleaded in ejectment as well as other cases. In McCracken v. McCracken, 67 Mo. 590, 592, it was applied to the defense of advancements made to pretermitted heirs. We have seen, and shall not here repeat what has been said on the subject, that the evidence which it was claimed tended to prove estoppel *in pais* against plaintiff, were acts performed by other parties, without any authority shown from plaintiff to perform them or that she even knew of them, but which if done by her in person and specially pleaded herein, would have created no estoppel against her. This evidence should not have been admitted by the Circuit Court, against the objection of plaintiff's attorneys, but the verdict in the case renders the error harmless and there is no cause for complaint.

The agreement endorsed on the plat in regard to a division line between Mary L. Tyler and the Buchanan heirs, as we have seen, specifically extended their line to the River, and its tendency would have been to rebut a *prima facie case* of dedication on their part, and such would have been its tendency in favor of plaintiff, if such a case had been made against her. But defendant claims that plaintiff recognized the wharf by it. In view of City Ordinance No. 5403, establishing the

North wharf and authorizing its opening, which remains in force to day as a law of the city, plaintiff and all other persons were bound to so recognize it, and could not avoid so doing; but such recognition did not carry with it any presumption of an intention to dedicate the premises to the defendant, but the contrary presumption. In the case of Brooklyn Street, 118 Pa. St. 640, 646, affirmed, In re Wayne Avenue, 124 Pa. St. 135, 137, this precise question was before the Court, and it was held, that where a street had been established but unopened, and a party conveyed a lot bounded on it and described it in the conveyance as bounded by said street, that whatever effect this call for a boundary might have between the grantor and the grantee in the deed, it was not a dedication of such street by the grantor in the deed.

The foregoing in no manner conflicts with the case of Buschmann v. City, 121 Mo. 523, as the Court decided that the plaintiff in the latter case had made a statutory dedication of the wharf at that point, by a plat duly executed, acknowledged and recorded. The reference to the conveyances by Buschmann, in the latter part of the opinion are only incidental and the question here discussed was neither raised by counsel in the case nor discussed by the Court, nor has this question ever been raised and passed on in any Missouri case. In the case of White v. City, 153 Mo. 80, Ordinance 5403 is referred to, but its effect in rebutting an intention to make a dedication, was neither presented to nor discussed by the Court.

There are only five methods known to the law by which a dedication of property can be established. These are, 1, by a deed of conveyance; 2, by a statutory dedication; 3, by an implied covenant in a deed bounding the property conveyed by a street; 4, by adverse possession; and 5, by matter *in pais*, or strictly speaking estoppel. In the first two cases the right vests at once without formal acceptance or use; in the third case the courts differ as to when the right vests; in the fourth case the use must be for the full statutory period before the right vests. In the fifth case, where land is platted by the

owner and public streets &c., are marked on it, and there is either a formal acceptance, or use of the streets, &c., sufficient to show an acceptance, the right vests. While this method, strictly speaking, is a gift, by offer and acceptance, the courts generally treat it as an estoppel. It is clear that the present case does not come within any of the foregoing, and if defendant acquired any right in the premises in controversy, it must have been acquired by estoppel, in the strict sense of the term.

This question has been definitely settled in favor of plaintiff, in a case involving a portion of this north wharf. In 1853, some forty odd persons joined in what is commonly called the "Wharf Deed," conveying for a wharf, all of their interests in property lying on the River, between Cherry street and the north city limit or Dock street, the latter lying south of the premises in controversy so that said deed did not affect them; St. Louis v. Wiggins Ferry Co., 88 Mo. 615, 617; Hafner v. St. Louis, 161 Mo. 34, 39, 41.

Mary A. Pendleton, who joined in said "Wharf Deed," sued in ejectment and recovered possession of a portion of the land embraced in said "Wharf Deed," and sold it for a valuable consideration to a party who in turn sold it to the defendant, in the case of St. Louis v. Schulenberg & Boeckler Lumber Co., 98 Mo. 613. The defendant pleaded estoppel as one of its defenses. In disposing of this question the Court, p. 617, said:

"3. The claim of an estoppel *in pais* is equally untenable, the former judgment in favor of Mary A. Pendleton was rendered in 1877, and in 1881 the city commenced this suit to regain possession. In the meantime Pendleton sold the property to the grantors of the present defendant. The grantees supposed the former judgment was conclusive, but that was a mere mistake of the law on their part. It does not appear that the City in any way induced the defendant or its grantors to buy the property, nor does it appear that the City, by its proper officers, had any knowledge of the proposed purchase. The first element of an estoppel by conduct is, that

there must have been a false representation or a concealment of facts. Bigelow on Estoppel (3 Ed.), 484; and this element is wanting in the present case."

Applying this ruling to the present case, there is nothing in it remotely resembling an estoppel, for if any false representations were made in this matter, defendant made them. The matters relied on by defendant as such, if done by plaintiff in person, did not come within this principal. Moreover, the defendant did not use the premises in controversy or make any expenditure on them in any way, so as to make it inequitable or unjust for her to reclaim them. In fact, its act in leasing them out is a mere repetition of the threatened trespass, carried out in this case, so vigorously condemned as an attempt to despoil the owners, by Judge Wagner, in his opinion in Anderson v. St. Louis, 47 Mo. 479, 484-486. The ruling also applies to the railroad company, in building a track across them, if it were a party to this suit and might otherwise avail itself of these claims, whether it took adverse possession of the tract of its own motion, or under a license from defendant to build the track at a time when plaintiff had no control over these premises and no notice of its intended action.

In view of the facts that no use of the premises in controversy was ever made by defendant prior to the time it leased them out, for a lumber yard in 1891; that the use made of them by the general public prior to that time in navigating the Mississippi River, was in derogation of any claim to them as wharf by the defendant; that defendant expended nothing on them and did not change its situation in regard to them; that plaintiff's lots were laid out into City Blocks by defendant for its own convenience and purposes prior to the time that the premises in controversy were formed, and it made the assessments of her lots omitting these premises, and the tax bills that were paid on the property adjoining them, describing it as bounded east by the wharf, all of this time holding out to plaintiff, by ordinance, that it would condemn and pay for them; that in the meantime plaintiff had an actual possession

by her tenants on her lots and exercised the usual acts of ownership over them to the river, by caring for and driving trespassers off of them, it seems unnecessary to further discuss the facts disclosed by the record herein, as failing to show any intention on her part to dedicate them or estop her, and we shall not do so, especially as the verdict herein, which is thoroughly sustained by the evidence, conclusively negatives any such intention on her part or estoppel against her.

In conclusion we submit that the judgment of the Supreme Court of Missouri, reversing the judgment of the Circuit Court of the City of St. Louis, and rendering judgment for the defendant, is erroneous and should be reversed, and that the judgment of the latter court is correct and clearly for the right party, and should be affirmed.

All of which is respectfully submitted.

G. A. FINKELNBURG,
E. P. JOHNSON,
E. S. ROBERT,
Attorneys for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1901.

MARTHA J. SWERINGEN,
Plaintiff in Error,

vs.

THE CITY OF ST. LOUIS,
Defendant in Error.

No. 187.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

PETITION FOR REHEARING IN BEHALF OF PLAINTIFF IN ERROR AND BRIEF IN SUPPORT THEREOF.

Now comes Martha J. Sweringen, plaintiff in error, and respectively petitions this Honorable Court for a rehearing of the above entitled cause, for the following reasons, to-wit:

1. Because the court, in sustaining the motion to dismiss this cause for want of jurisdiction, on the ground that the decision of the Supreme Court of Missouri herein on the patent under consideration "was not one of 'validity,' but one of fact as to where by the language of the grant was its eastern boundary line," and that the same did not present a federal question, overlooked the marked distinction in

cases of boundary lines, where they present questions of law or fact under the common law or a State law, and are therefore under the exclusive jurisdiction of the State courts to construe and determine, and where they present questions of fact that have been settled by the general government, either by an act of Congress or the Land Department, and are therefore under the ultimate jurisdiction of the general government to construe and determine as matters of law only (Shoshone Mining Co. v. Rutter, 177 U. S. 505, 511), which distinction is firmly established by a long line of decisions of this court. The present case comes directly within the decisions in the cases of Schools v. Risley, 10 Wall. (77 U. S.), 91; County of St. Clair v. Lovingston, 23 Wall. (90 U. S.), 46, and Shively v. Bowlby, 152 U. S. 1, 9, and it involves the validity of the patent relied on in it, and raises a federal question.

2. Because the court overlooked the legal conclusion, established in like manner, that the Land Department, in issuing patents, ascertains all of the facts of boundary and location, by which all courts are bound, and over which they ordinarily have no jurisdiction (Cragin v. Powell, 128 U. S., 691, 699), except on questions of law, and that official United States surveys and the plats attached to them import absolute verity as to the facts shown by them (Bates v. Illinois Central Rd. Co., 1 Black [66 U. S.], 204, 206), the plat of the survey herein showing plainly that there was no land between the meander line of the survey and the river, only a sand bar, plainly marked "MISSISSIPPI RIVER," and which is therefore conclusively a part of the river, and it makes the river the boundary in this patent; Jeffris v. East Omaha Land Co., 134 U. S., 178, 194-196, and that therefore a claim made under it that the title to land is held by virtue of it and the claim denied necessarily involves its validity and presents a federal question.

3. Because this court overlooked the fact that the statements made in the patent under consideration are such as to imperatively require its construction in order to ascertain its boundaries, and therefore a federal question is necessarily presented.

4. Because this court misconstrued the Act of Congress of June 6, 1874, and overlooked the decisions heretofore made by this court, especially Campbell v. Laclede Gas Light Co., 119 U. S., 445, 446, presenting a federal question under it, and others in regard to the manner in which a federal question could be raised under it (Crowell v. Randell, 10 Pet. [35 U. S.], 368, 394), and that under them a federal question is presented herein.

And your petitioner prays that an order may be made for a rehearing of the argument in this case, on a day to be appointed by the court, at such time and upon such points as the court may direct.

G. A. FINKELNBURG,
E. P. JOHNSON,
Attorneys for Plaintiff in Error.

We hereby certify that this petition for a rehearing is presented in good faith, and that we believe it is based on meritorious grounds.

G. A. FINKELNBURG,
E. P. JOHNSON,
Attorneys for Plaintiff in Error.

BRIEF IN SUPPORT OF THE FOREGOING PETITION.

The above distinction in regard to boundaries was not specially referred to either in the briefs filed in this case, or in the oral argument of it, but the second proposition in connection with it was silently assumed by the attorneys for plaintiff, (as the conclusion to be arrived at from numerous cases cited by them, none of which, however, specially pointed out this distinction in the opinion in the case.

This distinction arises on French and Spanish grants, either perfect or imperfect, and in some cases of imperfect ones that had been confirmed by the United States. The boundary of a perfect French or Spanish grant is exclusively under the jurisdiction of the French, Spanish or local law, and so are those of imperfect ones, even after confirmation by the United States (unless the confirmation was made with specific boundaries), until an ascertainment or fixing of such boundaries under the authority of the United States, which are usually ascertained or fixed by an official United States survey.

The most satisfactory way in which to present this distinction is believed to be by making concise digests of cases in this court presenting it, sufficient to show how the question arose in them, and by making brief extracts from the opinions on the point, and it is therefore adopted.

Before doing so the attention of this court is called to the fact that the Constitution of the United States vests in Congress the power to dispose of the public domain, and Congress vested this power in the Department of the Interior. This power confers a special jurisdiction of the subject, and its action is binding on the courts, except in cases of fraud, or where the land is not subject to be disposed of. In the latter case the Department is without jurisdiction; United States v. Schurtz, 102 U. S., 378-395;

Cragin v. Powell, 128 U. S., 691-699; Davis's Admr. v. Weibold, 139 U. S., 507-529; Hardin v. Jordan, 140 U. S., 371-400.

In McDonogh v. Millaudon, 3 How. (44 U. S.), 693, on writ of error to the Supreme Court of Louisiana, the plaintiffs in error had filed plans of survey and descriptions of the land with the register and receiver, as part of their title, giving the boundaries as they were claimed before the Supreme Court of Louisiana, and claimed that these were confirmed by Congress. This court decided against the latter contention, holding that said boundaries were not so confirmed, and that their recognition extended only to the boundaries the grants (being perfect Spanish ones) themselves furnished, according to their landmarks, and the construction under the local laws in virtue of which they were obtained, and did not raise a federal question. The opinion then proceeds as follows, on p. 706:

"If the fact assumed was true, that the plans and description had been confirmed, and title given according to them by the United States, then the decision would be opposed to the confirmation, and jurisdiction exist in this court."

The foregoing is directly in point in the case at bar, and in favor of the claim made by plaintiff, that a federal question is presented.

In Mackey v. Dillon, 4 How. (45 U. S.), 421, a private or unofficial survey, fixing boundaries, was read in evidence, and an instruction given treating it as binding on all parties including the United States. In sustaining the jurisdiction of this court on writ of error to the Supreme Court of Missouri, this court first referred to the proposition that the admission of evidence to establish the mere fact of boundary in regard to the extent of a grant cannot raise a federal question, however erroneous the evidence admitted to establish it, and then further said, p. 447:

"But when evidence is admitted as competent for this purpose, and it is sought to give it effect for other purposes which do involve questions giving this court jurisdiction, then the decisions of State courts on the effect of such evidence may be fully considered here, and their judgments reversed or affirmed in a similar manner as if a like question had arisen in a supreme court of error of a State, when reversing the proceedings of inferior courts of original jurisdiction,—on this principle we are compelled to act in the present suit, when dealing with the instruction given on behalf of the defendant."

The latter is the opposite of the case at bar, but applies the same principles as the preceding case. The decision of the Supreme Court of Missouri applies the evidence in regard to boundary contained in the patent under consideration, and construes it in such manner as to deprive plaintiff of rights and incidents that she claimed were vested in her by the patent, and the decision impairs its validity to that extent and presents a federal question.

In Doe v. Mobile, 9 How. (50 U. S.), 451, on writ of error to the Supreme Court of Alabama, both sides of the distinction under consideration are passed upon. The plaintiff claimed the piece of land in controversy under a French grant in 1757, confirmed by Act of Congress of May 8, 1822, on which a patent issued in 1837, and the city claimed it under a grant by Act of Congress of May 26, 1824 (4 Stats. at Large 67). The contention was as to the boundary line between the parties, and, looking at the case in its aspect of lines not fixed or sanctioned by the United States, the court held that it furnished no federal question, and that this location would depend on common-law principles, or the peculiar laws of the State, and not on any Acts of Congress or doings of our public officers (p. 467). The plaintiff insisted that when the conflict began, concerning this line and title to this piece of land, the register and receiver, who was authorized

to do so by two Acts of Congress, settled finally, then and forever, both the title and location, including the true boundary of the lot. The State court refused to concur in this contention, and this court held that it overruled the right set up under the supposed decision of those public officers of the United States concerning the title, and presented a federal question, which it reviewed. (p. 468.)

The opinion proceeds further, and leaves no doubt that if said officers had authority to fix the boundary line as contended by plaintiff, and had done so by setting stakes and stones or trees, or some other monument, the decision of the State court against the plaintiff would not only have furnished a federal question but would have necessitated a reversal of its judgment. (468, 469.)

The legal principle here announced is direct authority for the contention of plaintiff in error, and it needs no elaboration in order to apply it to a case like the one at bar, where the construction placed by the Supreme Court of Missouri upon the boundary line of the patent was such as to deprive the plaintiff of the rights she claimed under it, and impair its validity to that extent.

In Maguire v. Tyler, 1 Black (66 U. S.), 195, a Spanish concession had been granted in 1794 to Joseph Brazeau, of 4 arpents in front, on the Mississippi river, by 20 arpents in depth. In 1798 he sold and conveyed the same, excepting a reservation of 4 by 4 arpents on said river front, to Louis A. Labeaume (the patentee in the case at bar), said 4 by 4 arpents being located in the southeast corner of the land embraced in the patent under consideration in this case (and of Soulard's Survey) to said Louis Labeaume or his legal representatives. In 1799, said Louis Labeaume got another Spanish concession enlarging his tract of 4 by 16 arpents, which included the land conveyed to him by Brazeau, extending north to the Rocky Branch, calling for 20 arpents in depth, with an order for a survey, which was

executed by Antoine Soulard, Surveyor General of the Province, in the same year, in such manner as to include within its boundaries the 4 by 4 arpents reserved by Brazeau in his conveyances to Lebeaume; for which survey and plat see Record herein, p. 23. The "Old Board of Commissioners" confirmed these two claims together, 356 arpens to Labeaume and 16 arpents to Brazeau, and ordered surveys to be made and patents to issue accordingly. (Litigation ensued, beginning in this court with the case of West v. Cochran, 17 How. [58 U. S.], 403, next the case under review, and finally the case of Maguire v. Tyler, 8 Wall. [75 U. S.], 650, by which the Brazeau claim was sustained against the judgment of the Supreme Court of Missouri.) In 1817 the surveys ordered were made by Joseph C. Brown, deputy United States surveyor, so as to include both confirmations in one survey, aggregating 360 arpents—equal to 306 1-4 acres. The Recorder of Land Titles refused to issue a patent certificate on this survey, claiming that separate surveys should have been made of the claims of Brazeau and Labeaume, therefore, in 1833, said Brown made another survey of said claims, throwing off a portion on the west of the survey made by him in 1817, leaving the survey of Labeaume's claim otherwise as by the survey of 1817, which included both claims, and locating Brazeau's claim of 4 by 4 arpents on the river, immediately south of the south line of said survey of 1817.

Brazeau's representatives in a contest before the Land Department, claimed the 4 by 4 arpents in the southeast corner of Soulard's Survey, and the Survey of 1817 by Brown, and the Attorney General to the General Land Office, held that Brazeau was entitled to his 4 arpents in the southeast corner of Soulard's Survey of 1799 (being the same as Brown's Survey of 1817) which embraced both Brazeau's and Labeaume's tracts, but the Secretary of the Interior, on appeal, overruled this in 1851, set aside the surveys of Brown of 1817 and 1833, and ordered a survey of the Bra-

zeau claim outside of Labeaume's Survey as made by Soulard, and by Brown in 1817, and locating it as Brown did in 1833, and ordered a retracing of the lines of Soulard's Survey as Labeaume's claim, all of which was done, and resulted in the issue of the patent (see Record herein, p. 14) under consideration, March 25, 1852, in accordance with Soulard's Survey of 1799.

Maguire sued in the State court, which rendered judgment for the defendant, and which was afterwards affirmed by the Supreme Court of Missouri, and he sued out a writ of error to this court. A motion was made to dismiss the cause for want of jurisdiction, which was brought on with the final hearing, and was overruled on the ground that the construction of the Acts of Congress conferring power on the Secretary of the Interior, to do the acts complained of (set aside the surveys), were prominently drawn in question, and that the decision below rejected the title set up by Maguire by maintaining the validity of the secretary's decision, and presented a federal question.

Mr. Chief Justice Taney, with whom concurred Mr. Justice Grier, dissented on the question of jurisdiction, on the ground that the only point in dispute appeared to be upon the true location (boundaries) of the land reserved by Brazeau in his deed to Labeaume, which they contended depended upon the description of it in the deed, and not upon the survey made by the Surveyor General of the United States, and, therefore, no federal question was presented, but as the court took jurisdiction they concurred in affirming the judgment.

The learned dissenting justices overlooked the fact that Brazeau's confirmation of 4 by 4 arpents had been officially surveyed by the United States, and thereby brought the case within the unquestionably correct legal principle in regard to jurisdiction, so learnedly and carefully elaborated by Mr. Justice Catron, in the case of McDonogh v. Millaudon, 3 How. (44 U. S.), 693, 706, and which remains

the law. If there had been no official United States surveys of the Brazeau and Labeaume claims, the dissent undoubtedly embodies the true legal principle and the law of the case.

The judgment in the case is precisely in point in the case at bar, and sustains the jurisdiction herein contended for. To emphasize this conclusion, attention is called to the fact that if the dissent of the truly learned and able chief justice had been adopted in the case by this court, the patent obtained by Brazeau's representatives for his 4 by 4 arpents would have been utterly nullified, and their claim lost. This error on the part of the learned and able dissenting justices recalls to mind the fact that "even Homer nods."

There have been many decisions of this court involving this question since the foregoing, but its jurisdiction in them has seldom been raised by Attorneys or commented on by this court, and always sustained.

The opinion in the case at bar follows the legal doctrine announced in the foregoing dissent, and allows the judgment of the Supreme Court of Missouri to stand, without review, while its opinion holds that the United States Survey contained in the patent "exhibits a tract of fourteen acres or more between the eastern boundary of the survey and the river itself" (Record, p. 293), thus removing the survey line, not only from the river where plaintiff claimed that it was, but far enough west to leave east of the eastern survey line, not only the alluvion formed to the survey (94.16 acres), but also fourteen acres of the land placed inside of the survey line by the express words of the patent (Record, p. 23, at the end of the paragraph entitled "Remarks"), thereby utterly invalidating the title and patent, not only to the alluvion claimed as an incident under it, but also to the fourteen acres of land contained in the survey, through which plaintiff's lots run, and denying plaintiff's title and incident claimed under said patent. On the same principle the court could have removed the line west

so as to have excluded 318 of the 318.16 acres of land contained in the survey, and utterly invalidated the patent as effectually as if it had decided that the patent was illegally issued, and escaped a review by this court of its erroneous ruling on the plea that it was merely passing on a question of boundary instead of a federal question.

There is cited in the opinion dismissing the case at bar Shoshone Mining Co. v. Rutter, 177 U. S. 505, a mining claim case, as an authority against the jurisdiction of this court. It is respectfully submitted that there was a misapprehension by this court in regard to the latter case. There is a very marked and broad distinction, in regard to federal questions, between mining claim cases and patents for agricultural lands, the patent under consideration being of the latter class. The former involve questions of fact, local customs or rules of miners in the several mining districts, when not inconsistent with the laws of the United States, and the statute of limitations of the State or Territory where the same may be situated, none of which are settled by the laws of the United States or any officer or agent thereof before the action is begun. Besides, the statute merely authorizes an action to establish a right and does not create a right to be established (case last cited). On the other hand, the right to the patent under consideration was created by the statute under which it was issued, the means of ascertaining the right to it, with its extent and boundaries, were all provided for by the statute, and ascertained and fixed as therein provided, leaving no fact to be determined, but pure questions of law (the construction of said statute, or which is the same thing, the acts of the officers of the United States under it), in ascertaining whether its eastern boundary was the river, as claimed by plaintiff, which claim the Supreme Court of Missouri decided against plaintiff, clearly denying to her a right claimed under said statute, and presenting a federal question which this court has jurisdiction to review.

The distinction herein contended for is so clearly presented by Mr. Justice Brewer, in his opinion in the latter mining claim case, and the principle on which jurisdiction is acquired by this court in both classes of cases, so learnedly and definitely stated (in strict accordance with the digests of, and extracts from, the cases hereinbefore made), that the paragraph containing it cannot be abridged without marring the same, it is therefore inserted entire, and is as follows (177 U. S. p. 511):

"Counsel also calls our attention to the difference in the procedure in the disposal of agricultural and mineral lands. With respect to the former, all proceedings are carried on in the Land Department, and it is only after the legal title has passed by patent that inquiry is permissible in the courts, while in respect to the latter the aid of the courts is invoked before the issue of a patent and in order to determine, to some extent, the right thereto. Noticing this distinction he also notes the fact that a contest in respect to the validity of a patent for agricultural lands can be litigated in the federal courts, and hence draws the inference that a contest preliminary to a patent for mineral lands, and involving the right thereto, must also be one which can be litigated in the same courts. But we think the true inference from this difference of procedure is to the contrary, because, in respect to agricultural lands, it is settled that all questions of fact are determined by the Land Department, and that after the issue of a patent only questions of law are open for consideration in the courts, and, as the laws of Congress alone determine the matter of the disposal of the public lands, it follows that the questions of law which are thus open for consideration are those arising under the Acts of Congress. While on the other hand, as we have heretofore shown, in these adverse suits preliminary to a patent of mineral lands, not merely questions of law arising under the statutes of the United States, but questions of fact and questions arising under local rules

and customs and State statutes are open for consideration. The scope of the inquiry, which is permissible in the two cases, emphasizes the fact that in the latter case the controversy may be one not arising under the Constitution or laws of Congress."

The foregoing paragraph is quoted from a case, like the other mining cases cited, that involved merely the ascertainment of the right to a patent, and the result does not involve the question here presented. In order to have done so, the right to the patent must have been ascertained and the patent issued under the laws of the United States, fixing definitely its location and boundaries, and any construction of it, removing such location or any of its boundaries so as to reduce the area of the land conveyed, or deprive the grantee of any right incident to it, would have impaired its validity and presented a question over which this court has jurisdiction, and would have been precisely the case at bar.

Thus far only the cases involving immovable survey or boundary lines have been cited, but there is a class of cases involving movable survey or boundary lines on navigable waters, generally with a meander survey line drawn along or near the bank or shore, to which the legal principle deduced from the former cases has special application, and which boundary lines are like the one in the case at bar, and are not confined to the specific calls for monuments on the line surveyed as in said cases, but which in addition involve a construction of the grants of the United States made in pursuance of its laws, in order to determine whether the grants convey title to high or low-water mark, or to the center of the stream, and which present federal questions even if they were not presented in cases of immovable survey lines as boundaries, and this court has continuously, tacitly in some cases, recognized this doctrine. Such are the following cases in this court decided on writs of error to State courts: Railroad Co. v. Schurmeier, 7 Wall. (74 U. S.), 272; Barney v. Keokuk,

94 U. S., 324; Packer v. Bird, 137 U. S., 661; Knight v. U. S. Land Ass., 142 U. S., 161; Shively v. Bowlby, 152 U. S., 1; Grand Rapids and Indiana Rd. Co. v. Butler, 159 U. S., 87, to which is added the case of Hills v. Homton, 4 Sawyer, 195, commenced in a federal court by a citizen of the district in which it was commenced, and the case of Mitchell v. Smale, 140 U. S., 406, removed from a State court to a federal court, both presenting the same question, and all of which were maintained on the ground that they presented federal questions, and jurisdiction in them could not have been maintained on any other ground.

In the cases of Hills v. Homton, 4 Sawyer, 195; Mitchell v. Smale, 140 U. S., 406, 407-410, and Shively v. Bowlby, 152 U. S., 1, 9 (in none of which latter cases was there an island in controversy), the question of jurisdiction was specially discussed, upheld on the ground that a federal question was presented, and in the last case it was held that an attack of a patent, precisely such a one as was made on the patent in the case at bar, sustained by the State court as in the present case, was declared to be

"A direct adjudication against the validity of a right or privilege claimed under a law of the United States, and presents a federal question within the appellate jurisdiction of this court." (pp. 9–10.)

It is not believed to be possible to distinguish the latter case from the one at bar.

In Packer v. Bird, 137 U. S. 661, the question of jurisdiction is not discussed, but it is stated therein, p. 669, that:

"Whatever rights or incidents attach to the ownership of property conveyed by the government will be determined by the States, subject to the condition that their rules do not inpair the efficiency of the grants or the use and enjoyment of the property by the grantee."

It is the enforcement of this condition that plaintiff is now seeking, and it is respectfully submitted that this

court has jurisdiction to determine whether, as she claims, that condition has been violated by the judgment of the Supreme Court of Missouri herein, and, if so, to reverse the judgment of the latter court.

In the case of Packer v. Bird, 137 U. S., 661, there was an island in the river, and it is further respectfully submitted that this court was misled herein by that fact, but there is no intimation in the opinion in the case that the question of jurisdiction could be raised by, much less turn on, that fact. It was a mere incident in the case that had no bearing on the question of jurisdiction and was not in any of the other cases cited herein dealing with the question of boundaries on navigable waters, except in the cases of Railroad Co. v. Schurmeier, 7 Wall. (74 U. S.), 272, and Grand Rapids and Indiana Rd. Co. v. Butler, 159 U. S., 87. In the former no comment was made on the island, if there was really one formed, and in the latter case it is doubtful whether there was an island in the river at the time of the original United States Survey, but there was one subsequently surveyed, and in delivering the opinion in the case Mr. Chief Justice Fuller quotes approvingly from the opinion of the Supreme Court of Michigan in the case, as follows, 159 U. S., p. 89:

"A large mass of testimony was taken as to the character of this so-called island at the time of the original surveys, and for some years subsequent, the complainant's testimony tending to show that it was at first a low sand bar covered a good part of the year with water, and the defendants tending to show that it was then a well-defined island. It is immaterial to determine what the facts are as to the condition of this land in those early days, for, in our judgment, it was of no consequence whether it was what might be termed 'an island' or 'a sand bar' or 'a piece of low, wet ground.' The law is the same in either case."

The sand bar displayed on the plat of the survey herein (Record, p. 14) is plainly marked on its face, "MISSIS-

SIPPI RIVER," with an arrow showing the course of the river over it, thus demonstrating that it was neither land nor an island, but part of the river bed, and that there was no land between the survey line and the river, and that the river was the boundary of the survey. This plat and survey are absolutely conclusive, and not subject to contradiction in any manner; Bates v. Illinois Central Rd. Co., 1 Black (66 U. S.), 204, 206; Lindsay v. Hawes, 2 Black (67 U. S.), 554,559; Kissell v. Schools, 18 How. (59 U. S.), 19, 25; Jourdan v. Barrett, 4 How. (45 U. S.), 169, 184. And this plat fixed the river as the boundary in this patent beyond dispute; Railroad Co. v. Schurmeier, 7 Wall. (74 U. S.), 272, 276; Hardin v. Jordan, 140 U. S., 371, 373; Jefferis v. East Omaha Land Co., 134 U. S., 178, 194; Grand Rapids & Ind. Rd. Co. v. Butler, 159 U. S., 87, 89; Shelton v. Maupin, 16 Mo., 124, 126-128; St. Paul, etc., Rd. Co. v. First Division, etc., Rd. Co., 26 Minn., 31. But the Supreme Court of Missouri, plaintiff claims, has contradicted this plat in this case, and this contradiction presents a federal question herein.

There is still another class of cases that present all of the features of the ones cited herein on both immovable and movable boundary lines, nd include also the question of riparian rights under United States grants. The premises in controversy in them respectively were alluvial and formed by accretions to the banks of the Mississippi river. Such are the cases of Schools v. Risley, 10 Wall. (77 U.S.), 91, and County of St. Clairv. Lovingston, 23 Wall. (90 U. S.), 46. The first of the latter cases originated in the City of St. Louis, and was heard on writ of error to the Supreme Court of Missouri, in this court, and the second originated immediately across the river from the former and (and both of them are like the one at bar) was heard in this Court on writ of error to the Supreme Court of Illinois. The only question discussed in either of them, by either Counsel or this Court, was that of boundary, but the questions of juris-

diction in this Court, and whether a United States grant bounded on a navigable stream carried with it a right to the alluvion formed by accretions to such grant, were necessarily involved, and decided in the affirmative. It is respectively submitted that neither of them can be distinguished from the case under consideration. To the same effect is the case of Jefferis v. East Omaha Land Co., 134 U. S., 178, a case commenced in a United States Circuit Court, by a citizen of the district of the court, and a judgment for plaintiff affirmed by this court; and also the case of Mitchell v. Smale, 140 U. S., 406, a case removed from a State court, involving a meander line on a lake, under a United States patent, and the right of removal sustained on the ground that a federal question was presented.

But in addition to all of the foregoing, and aside from the question of a meander line or plat, the statements in the patent to Louis Labeaume, or his legal representatives, establish a Spanish concession to him of the land to which the premises sued for are an accretion, in 1799, a survey of the same by Antoine Soulard, Surveyor of the Province, in the same year, a confirmation on September 22, 1810, by commissioners appointed for that purpose, commonly called the "Old Board of Commissioners," to said Louis Labeaume, agreeably to said concession, and that on June 14, 1811, they issued to him a patent certificate numbered 982, for said confirmation (Record, p. 14) (all done in pursuance of the provisions of the treaty of Paris). The patent also contains a copy of said Soulard's Survey, from which it is plainly obvious to the naked eye, that the latter survey and confirmation were bounded on the east by the Mississippi river, and it is so stated to be bounded in said patent. It is further stated therein that accretions had formed to said Soulard's Survey to the extent of about 14 acres at the time United States Survey No. 3,333 was executed, and that they were included in this latter survey, and account in part at least for the excess of land in the latter over the former

survey, and that said accretions appeared to be rapidly advancing (Record, p. 23), and they necessarily called for a construction of this patent in order to determine its boundary line, and presented a federal question.

The rule for the construction of deeds (and which rule applies with equal force to United States patents) announced by Devlin on Deeds (2d Ed.), Sec. 836, p. 1113, Vol. 2, is, that "the rule is that the intention of the parties is to be ascertained by considering all the provisions of the deed, as well as the situation of the parties and then to give effect to such intention if practicable, when not contrary to law;" Walton v. Drumtra, 152 Mo., 489, 497; Johnson v. Bowlware, 149 Mo., 451, 456; Carter v. Foster, 145 Mo., 383, 392; Presnell v. Hadley, 141 Mo., 187, 191, 194; West v. Bretelle, 115 Mo., 653, 658.

It is respectfully submitted that a federal question is necessarily presented by this required construction of this patent.

Attorneys for defendant insist that neither the construction nor the validity of the patent under consideration was in question in this case, and this court was evidently misled by it. We have already seen from direct decisions of this court that both were involved. The attack on the patent was a direct one by the objections made by them to reading it in evidence on the ground that it was irrelevant and immaterial and not showing plaintiff was a riparian owner, which the trial court overruled (Record, p. 13), but which the Supreme Court of Missouri sustained (Record, p. 295), and thereby invalidated it at least in regard to all that plaintiff claimed under it in this action.

There is no question but what the United States would have owned the legal title to the alluvial formation in dispute (under either the civil, French, Spanish or common law, under which one of them is immaterial, as they are all substantially the same on this question [Smith v. St. Louis Public Schools, 30 Mo., 290, 299), if the patent

under consideration had not been issued (Shively v. Bowlby, 152 U.S., 1, 35), and there is no more question that it conveyed that right if bounded by the river. The latter is plaintiff's claim, denied to her by the decision of the Supreme Court of Missouri, and presents a federal question under the Act of Congress in pursuance of which the patent was issued.

Plaintiff was bound to show a legal title to the premises sued for in order to recover; Kissell v. St. Louis Public Schools, 18 How. (59 U. S.), 19, 21. That is, she could recover only on the strength of her own title, not on the weakness of the defendant's title, and therefore defendant, being in possession of the premises sued for could contest the patent under consideration, and raise all of the questions in regard to it in order to invalidate the same whether defendant made any claim of title adverse to this patent or not, and the attack made on it raised all of the questions specified herein.

It is not deemed necessary to again go over the question, elaborately treated in the "Statement and Brief for Plaintiff in Error on Motion to Dismiss or Affirm" this case, and again cite the long line of cases holding that when a grant of land by a patent is contested, the construction of theAct of Congress under which it was issued, is drawn directly in question, and that a federal question arises in such case under the first clause of Sec. 709, R. S. U S., and need not be specially set up or claimed, and and that when a patent has been read in evidence against objections to its introduction, and a chain of title under it introduced in evidence, with instructions asked in regard to the effect of such patent, all of which was done in the case at bar, the federal right is "specially set up" and "claimed."

This court, however, has placed a construction on the Act of Congress of June 6, 1874, 18 U. S. Stats. at Large, p. 62, relied on in the latter brief, which is believed

to be at variance with its terms, as there is no intimation in this Act that it shall be restricted to confirmations unpatented, but the language used in it is so broad that it covers all confirmations; and this court held in the case of Campbell v. Laclede Gas Light Co., 119 U. S., 445, 446, that where the question was whether an older patent or this Act of Congress passed the legal title to such a confirmation, it presented a federal question under a writ of error to the Supreme Court of Missouri.

This Act of Congress concerned the public lands, and is a public law of which the courts take judicial notice (Pavin v. Ryan, 32 Mo., 21, 24), and the courts are presumed to keep it in mind. The Supreme Court of Missouri, in the case at bar, whether consciously or unconsciously, is immaterial, decided directly against it in a paragraph which is as follows:

"Whatever may have been the original Spanish concession, the survey and patent made under the confirmation, in 1852, must control as to the extent of Labeaume's right." (Record, p. 293.)

It is not necessary that said Act of Congress should have been mentioned, referred to in the record herein, or even thought of, by either the Supreme Court of Missouri, when it made said decision, or any attorney in the case, as the federal question in the case under it was necessarily raised and passed on, and this court has jurisdiction thereof.

In Miller v. Nichols, 4 Wheat. (17 U. S.), 311, 315, the truly learned, able and eminent Mr. Chief Justice Marshall, speaking for the court, said:

"It would not be required that the record should, in terms, state the misconstruction of an Act of Congress, or that an Act of Congress was drawn into question. It would have been sufficent to give this court jurisdiction of this cause, that the record should show that an Act of Congress was applicable to the case."

He reiterates this proposition in somewhat different language, in Hickie v. Starke, 1 Pet. (26 U. S.), 94, 98, and Mr. Justice Story, in Crowell v. Randell, 10 Pet. (35 U. S.), 368, 394, quoted it *verbatim*, with approval, and proceeded to explain it in such manner as to make it precisely applicable to the case at bar, as follows:

"Because upon the statement of facts (statements in the patent herein,) the State court, under these circumstances, must have misconstrued the Act of Congress or disregarded it; for otherwise they would not have given the judgment which was sought to be revised."

All of which is respectfully submitted,

G. A. FINKELNBURG,
E. P. JOHNSON,
Attorneys for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

MARTHA J. SWERINGEN,
Plaintiff in Error,

vs.

THE CITY OF ST. LOUIS,
Defendant in Error.

No. 187.

MOTION TO DISMISS OR AFFIRM.

Now comes the defendant in error, by its counsel appearing in that behalf, and moves the Court to dismiss the writ of error in the above entitled cause for want of jurisdiction, because the judgment from which said writ was sued out is the judgment of the Supreme Court of one the United States, to-wit., the Supreme Court of the State of Missouri.

And the said defendant in error, by counsel as aforesaid, also moves the court to affirm the said

judgment upon which the said writ was sued out, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that said appeal was taken for delay only.

B. SCHNURMACHER,
CHAS. CLAFLIN ALLEN,
Attorneys and Counsel for
Defendant in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

MARTHA J. SWERINGEN,
Plaintiff in Error,
vs.
THE CITY OF ST. LOUIS,
Defendant in Error.
No. 187.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

This action, for the recovery of certain real estate, was begun in the Circuit Court of the City of St. Louis on April 16, 1895. The property to which plaintiff claims to be entitled constitutes a part of the wharf of the City of St. Louis, and embraces all that portion thereof lying between the Mississippi River and the eastern boundary line of City Blocks 2544 and 660 East, extending entirely across the wharf.

Upon a trial in the court of original jurisdiction plaintiff recovered a judgment for a portion of the land described in her petition. That part for which judgment was rendered is a strip of the wharf 90 feet wide between parallel lines and 60 feet north of the north line of Dock street. Plaintiff took no appeal from the judgment thus rendered, but defendant, the City of St. Louis, did, and the case went to the Supreme Court of Missouri. In that court the judgment of the Circuit Court was reversed. Thereupon plaintiff sued out a writ of error and thus brought the case here.

The bill of exceptions containing the history of the proceedings in the trial court is contained in the printed transcript and is quite lengthy. There is absolutely nothing in the bill or in the entire record which shows that a single Federal question was raised, presented, discussed or determined during the trial of the case or subsequently on appeal in the Supreme Court.

Plaintiff showed no paper title to the property in controversy, for which, indeed, there could be no paper title, as it forms a part of extensive accretions made by the Mississippi River since 1864; but she claims that these accretions belong to the present successors in title to one Louis Labeaume, to whom, or to whose legal representatives, the United States issued a patent in March, 1852, in confirmation of a concession made February 15, 1799, by Zenon Trudeau, Lieutenant-Governor of the Spanish Province of Upper Louisiana to said Labeaume. This patent embraces 339.68 acres of land, all covered by Survey No. 3333. According to plaintiff's contention the patent

carried the land conveyed by it to the Mississippi River, as its eastern boundary, and made it, therefore, riparian property, entitled to any accretions forming next to it in the river. The contention of the defendant, on the contrary, is that by metes and bounds, courses and distances, the eastern boundary of the tract so patented to Labeaume's representatives, was not the Mississippi River, but a fixed and definite line laid out by the surveyor in a sand beach, which interposing itself between the eastern boundary of Labeaume's land and the river, made it non-riparian property, not entitled to accretions.

In the lower court plaintiff's contention prevailed, and the court gave her judgment for the strip of 90 feet, extending across the wharf and to the river, on the theory of accretions belonging to the property covered by Labeaume's patent. In the Supreme Court the views of defendant were adopted, and that Court, taking up the description contained in the Labeaume patent, and interpreting the language thereof, upon general rules of law, held that the Lebeaume title did not reach the river and was not entitled to any of the accretions.

The Supreme Court of Missouri having reversed the judgment of the lower court, plaintiff filed her motion or petition for rehearing, based on two grounds, in each of which she sought to convince the Court that it had erred in its interpretation of the description of the property included in the patent, and in the conclusion reached by it that the eastern boundary did not extend to the river. Nowhere in the motion is a Federal question suggested.

The assignment of errors sets forth eight reasons why this court should reverse the judgment of the

State Supreme Court, none of them raising a Federal question. The substance of them all is that error was committed in the conclusion that Labeaume was not a riparian owner.

So far as the record proper is concerned it is certain that no Federal question is suggested, nor is any right or authority under the United States *specially set up or claimed*, as is required by section 709, U. S. Revised Statutes. The petition is in the usual form of petitions in ejectment under the Missouri practice, and sets forth:

1. That defendant, the City of St. Louis, is a municipal corporation.

2. That on April 9, 1891, plaintiff was entitled to the possession of the premises described.

3. That defendants on the same day entered into such possession and unlawfully withhold the same from plaintiff, to her damage in the sum of five thousand dollars.

4. That the value of the monthly rents and profits of the premises is one hundred dollars.

Plaintiff accordingly prays judgment for possession, five thousand dollars for the unlawful detention, and one hundred dollars for monthly rents and profits from the rendition of judgment until possession of the premises shall be delivered to her.

The answer of the defendant, the City of St. Louis, was:

1. A general denial of every allegation of the petition.

2. A plea of the statute of limitations (Revised Statutes of Missouri, 1899, section 4262), that it had had open, notorious, continuous and adverse possession of the premises, under claim and color of title, for more than ten years next before the filing of the petition.

3. That for more than ten years the property had been in the adverse use and occupancy of the defendant, as a public wharf, and used as such by the public, with plaintiff's acquiescence.

4. That neither the plaintiff nor her ancestor, predecessor, grantor, or the person under whom she claims, was seized or possessed of the premises within ten years before the commencement of the action.

The replication to this answer consisted of a general denial of all the allegations thereof.

In addition to reaching the conclusion that the property patented to Labeaume was not riparian property to which the accretions, embracing the property in suit, attached, the Supreme Court of Missouri also found against the plaintiff on other independent grounds.

Thus, during the trial in the Circuit Court her counsel introduced in evidence a paper and plat marked "Exhibit A," appearing in the printed transcript between pages 10 and 11, and by her counsel plaintiff agreed to be bound by this paper and plat. The plat represents plaintiff's property, tinted in pink, as bounded on the east *by the wharf* and not by the river. In its opinion the court expressly refers to this agreement and plat and finds that twenty-two years before the commencement of the action the particu-

lar property which plaintiff seeks to recover was a part of the public wharf and not claimed by any private parties. (See pp. 295-296 of printed transcript.) The court also calls attention to the fact that plaintiff paid no taxes upon the land sued for since the year 1874, but did pay taxes on property *to the wharf line.* Also that her tax receipts showed that the land on which they were paid *was bounded on the east by the wharf*, and that neither she nor her agents objected to such description. (See p. 296 printed transcript.)

The court also concludes that there was no proof of possession or seizin of the tract sued for by plaintiff or those under whom she claims within ten years prior to the commencement of the action.

On these independent grounds the judgment may well stand, without reference to any alleged Federal question.

If we understand the position taken in behalf of plaintiff, it is that the Federal question, upon which the jurisdiction of this court is invoked, arises by reason of the fact that the title to the land, which it is claimed draws unto itself the accretions in question, was derived by patent from the United States. No other theory upon which a Federal question may be said to arise can be suggested.

But the validity of the patent to Labeaume is not and was not at any time disputed. The only difference between the parties is as to the proper interpretation of the language used therein, in describing the property intended to be confirmed to Labeaume. For plaintiff the court was asked so to construe this language as to carry the side lines of the property down to the Mississippi River; on behalf of defendant, that

the proper construction of the words employed brought them down to the sand beach, and short of the river itself. Upon general principles of law the Supreme Court of the State decided that the eastern boundary was a fixed and definite line in the beach, and that between this line and the river was a considerable tract of beach land. The survey accompanying the patent will be found in the printed transcript between pages 14 and 15.

It will also appear from Exhibits A and B herewith filed, by way of evidence, that plaintiff in error is no longer interested in the premises which are the subject of this controversy. While she sued for the possession of all of the wharf between city blocks 2544 and 661 east and the Mississippi River, the contest narrowed itself down to her right to a 90 foot strip lying 60 feet north of Dock street, and for the possession of which she recovered judgment in the Circuit Court. That this is all to which she deemed herself entitled is made apparent by reference to the instruction or declaration of law offered by her counsel at the conclusion of the case, and found on page 284 of the printed transcript.

This very strip she conveyed by the deed marked "Exhibit A" to Arthur B. Barrett, S. Harper Barrett and Thomas A. Russell. Thereafter Arthur B. Barrett, by the deed marked "Exhibit B," transferred and conveyed his one-third interest therein to one Annie T. King. Plaintiff, therefore, ceased to have any interest whatever in this controversy. And not only that, but the parties who succeeded her in the title, pending this writ of error, instituted their suit in ejectment for this same property in the Circuit

Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, as will appear from the certified copy of the proceedings in that case, also herewith submitted, marked "Exhibit C." And it will further appear therefrom that the Circuit Court, taking jurisdiction on the theory that a Federal question was involved under the pleadings, and conceding the position taken by the plaintiffs therein, that they were riparian proprietors and entitled to accretions, found judgment against them and in favor of the City of St. Louis, the defendant in error herein, on the grounds of estoppel and the bar of the statute of limitations, just as did the Supreme Court of Missouri.

BRIEF.

I.

The question of riparian rights is not a Federal question but is determinable by the State courts, according to the general rules of law.

"The jurisdiction of the State over this question of riparian ownership has been always, and from the foundation of the government, recognized and admitted by this court. The extent of plaintiff's right of property was, therefore, the subject of adjudication by the State Court, and the rule has been definitely stated by that court in its judgment which is now under review."

St. Anthony Falls Water Power Co. v. Water Commissioners, 168 U. S. 349;
St. Louis v. Myers, 113 U. S. 566;
Packer v. Bird, 137 U. S. 661;
St. Louis v. Rutz, 138 U. S. 226;
Hardin v. Jordan, 140 U. S. 371;
Ill. Cent. R. R. Co. v. Illinois, 146 U. S. 387;
Shively v. Bowlby, 152 U. S. 1.

II.

Nor does the fact that title to land is derived from the United States, *the validity of the grant not being disputed*, present a Federal question.

Avery v. Popper, 179 U. S. 305;

Blackburn v. Portland Gold Min. Co., 175 U. S. 575;

De Lamar's Nevada Gold Min. Co. v. Nesbitt, 177 U. S. 525.

III.

Even if this case involved a right or authority which could properly be said to be exercised under the United States, the jurisdiction of this court cannot be invoked because the right was not "*specially set up or claimed.*"

Speed v. McCarthy, 181 U. S. 269;

F. G. Oxley Stave Co. v. Butler Co., 166 U. S. 648;

Columbia Water Co. v. Columbia Electric Street Railway, L. & P. Co., 172 U. S. 475.

IV.

The claim of a Federal question comes too late when first made in a petition or motion for rehearing.

Eastern Building & Loan Assn. v. Welling, 181 U. S. 47;

Pim v. St. Louis, 165 U. S. 273;

Sayward v. Denny, 158 U. S. 180;

Loeber v. Schroeder, 149 U. S. 580;

Texas & Pacific Ry. Co. v. Southern Pacific Ry. Co., 137 U. S. 48.

Or in a petition for a writ of error.

Leeper v. Texas, 139 U. S. 462.

V.

And cannot be introduced in the assignment of errors.

Cincinnati, Hamilton & Dayton R. R. Co. v. Thibaud, 177 U. S. 615.

Citing:

Ansbro v. United States, 159 U. S. 695;
Cornell v. Green, 163 U. S. 75;
Muse v. Arlington Hotel Co., 168 U. S. 430;
Miller v. Cornwall R. R. Co., 168 U. S. 131;
Fowler v. Lamson, 164 U. S. 252.

VI.

The judgment of the Supreme Court of Missouri was against plaintiff, not only on the ground that she was not a riparian proprietor, and therefore not entitled to the accretions, but on other independent grounds, as appears from the opinion of the court. Under such circumstances this court will dismiss or affirm, even though the question of riparian rights raises a Federal question and was erroneously adjudicated.

Speed v. McCarthy, 181 U. S. 269;
Lowry v. Silver City G. & S. Min. Co., 179 U. S. 196;
2 Foster's Federal Practice (2 Ed.). pp. 1004, 1005.

VII.

Plaintiff in error having parted with all interest in the case, and there being no longer any controversy

between her and defendant in error, the writ should be dismissed for that, if for no other, reason.

California v. San Pablo & Tulare R. R. Co., 149 U. S. 308;
Mills v. Green, 159 U. S. 651;
County of San Mateo v. Southern Pac. R. R. Co., 116 U. S. 138;
Addington v. Adams, 125 U. S. 693;
Lord v. Veazie, 8 How. (49 U. S.) 251.

ARGUMENT.

I.

The claim of plaintiff in error that a Federal question is presented in this case arises out of the fact that riparian rights are involved. The question of riparian rights, however, is not a Federal question. This has been so frequently declared by this court that extended discussion is unnecessary. The prior decisions of the court were fully reviewed in the case of *St. Anthony Falls Water Power Co. v. Board of Water Commissioners*, 168 U. S. 349, in an opinion prepared by Mr. Justice Peckham, and the conclusion then reached was stated in the following language:

"The jurisdiction of the State over this question of riparian ownership has been always, and from the foundation of the government, recognized and admitted by this court. The extent of the plaintiff's riparian right of property was, therefore, the subject of adjudication by the State court, and the rule has been definitely stated by that court in its judgment, which is now under review."

Among the cases reviewed is the case of *St. Louis v. Myers*, 113 U. S. 566, wherein it was held by this court that the act admitting the State of Missouri into the Union left the rights of riparian owners on the Mississippi River to be settled according to the principles of State law. In the opinion delivered by Mr. Chief Justice Waite, it was said:

"The act of Congress providing for the admission of Missouri into the Union (act of March 6, 1820, 3 Stat. at L., 545, Chap. 22), and which declares that the Mississippi River shall be 'a common highway and forever free,' has been referred to in the argument here, but the rights of riparian owners are nowhere mentioned in that act. *They are left to be settled according to the principles of State law.*"

II.

It will also be suggested by counsel for plaintiff in error that a Federal question is involved in this case because plaintiff traces her claim of title back to a patent issued by the United States to one Louis Labeaume, in confirmation of a concession by the Spanish government, made in 1799, and that the construction of this patent was involved. *But the validity or genuineness of the Labeaume patent was not in dispute.* The controversy between the parties was merely over the proper interpretation of the words descriptive of the land. The point between them was whether the eastern boundary of the land covered by the patent was carried by the words of description to the Mississippi River or to a fixed and definite line short of the river, leaving an intervening strip between the land conveyed by the patent and the stream.

Plaintiff in error contended that a correct interpretation carried the eastern boundary to the Mississippi; defendant that it did not. In the one case the land would be entitled to the accretions which are the subject of this action; in the other it would not.

This was not a Federal question. If the mere fact that the title emanated from and is traced back to the government, makes a Federal question, then, as was remarked by Mr. Justice Brewer in the case of *Hamblin v. Western Land Co.*, 147 U. S. 531:

"Almost any case in ejectment could be taken from the Supreme Court of a State to this."

In the very recent case of Avery v. Popper, decided December 3, 1900, 179 U. S. 305, it was held that (Syllabus):—

"The mere fact that a plaintiff in error was a purchaser at marshal's sale of property sold under execution from a Federal court, does not entitle him to a writ of error from the Supreme Court of the United States to a State court with respect to the validity and priority of a chattel mortgage covering the same property or a part thereof, *where there is no question as to the validity of the judgment*, or the regularity of the proceedings in the Federal court."

And so it has been held that though parties claim adversely to each other under the mining laws, *or under patents of the United States*, they are not entitled to a writ of error from this court, unless a question be made as to the meaning and construction of a Federal Statute or of an authority exercised under the United States, *and the fact that ownership comes from the United States is not enough. Blackburn v. Portland Gold Min. Co.*, 175 U. S. 575; *DeLamar's Nevada Gold Min. Co. v. Nesbitt*, 177 U. S. 525.

It is therefore submitted that no Federal question exists in this case, merely because plaintiff claims under the Labeaume patent, the validity of which has never

been questioned. The construction or interpretation of the language used to describe the property intended to be granted depends upon general rules of law, and not upon any rules cognizable only in the courts of the United States.

In point of fact the Supreme Court of Missouri in interpreting the language of description in the patent, but followed a rule adopted by this court in a similar case. The eastern survey line, as defined in the Labeaume patent, was laid in a sand beach, beyond which was the river. The government had the right to grant to the river, or to the beach, and it chose to do the latter. The beach was land, and interposed itself between the grant and the water and thus cut off the right to accretions. In this respect the case strongly resembles the case of *Niles v. Cedar Point Club*, 175 U. S. 300, decided December 4, 1899, wherein it was held that a marsh of swampy or boggy land in which a boundary line was surveyed was enough to prevent the right to accretions forming in Lake Erie, the Court, by Mr. Justice Brewer, saying:

"Of course if the fractional sections patented to Margaret Bailey did not border on some body of water there were no riparian rights, and if the conclusion of the trial court that this marsh was land (for swamp and boggy land is to be treated as land), was correct, then whatever changes may have come to the marsh —whether it became more or less subject to overflow —would not alter the fact that the rights of Margaret Bailey, the patentee, were limited to the very lands which were conveyed to her and for which she paid, and did not extend over the meander line into the territory north. But, it is urged, that the fact that

the meander line was run amounts to a determination by the Land Department that the surveyed fractional sections bordered upon a body of water navigable or non-navigable, and that therefore the purchaser of these fractional sections was entitled to riparian rights; and this in face of the express declaration of the field notes and plat that that which was lying beyond the surveyed sections was 'flag marsh,' or 'impassable marsh and water.' *But there is no such magic in a meandered line.* All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary there may be found forests or prairie, land or water, government or Indian reservation."

This is exactly the case here. The description of the land embraced within the Labeaume patent bounds it on all sides, including the eastern side, by lines laid out on the surface of the earth, and which, as the record shows, can be relocated to-day as well as they were located fifty years ago. Instead of granting to the river the government elected to terminate the grant on the east in a beach which was well defined and already large in area in 1852, when Survey 3333 was made by Surveyor General M. Lewis Clark. (See Plat between pages 14 and 15, printed transcript.) This beach, it must be admitted, interposed itself as effectually as could the marsh of swamp or boggy land in the Niles case.

III.

But granting that a Federal question was involved merely because the proper interpretation of the descriptive words in the Labeaume patent became neces-

sary, or because riparian rights were involved, plaintiff in error nevertheless is not in position to invoke a review of the judgment of the Supreme Court of Missouri upon this writ of error. In order to give this court jurisdiction on the ground of a Federal question the averments must be so distinct and positive as to place it beyond doubt that the party bringing the case up by the writ intended to assert a Federal right.

The claim of a right or authority exercised under the United States must not only be "*drawn in question*" but under section 709 of the U. S. Revised Statutes, must be "*specially set up or claimed.*"

Referring to the language of this section of the Statutes in the case of *F. G. Oxley Stave Co. v. Butler County*, 166 U. S. 648, this court, speaking by Mr. Justice Harlan, said:

"The words, 'specially set up or claimed,' imply that if a party intends to invoke for the protection of his right, the constitution of the United States, or some treaty, statute, commission or authority of the United States, he must so declare; and unless he does so declare 'specially,' that is unmistakably, this court is without authority to re-examine the final judgment of the State court. This statutory requirement is not met if such declaration is so general in its character that the purpose of the party to assert a Federal right is left to mere inference. It is the settled doctrine of this court that the jurisdiction of the Circuit Courts of the United States must appear affirmatively from the record, and that it is not sufficient that it may be inferred argumentatively from the facts stated. Hence the averment that a party resides in

a particular State, does not imply that he is a citizen of that State. *Brown v. Keene*, 33 U. S., 8 Pet. 115; *Robertson v. Cease*, 97 U. S. 646, 649. Upon like grounds the jurisdiction of this court to re-examine the final judgment of a State court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing the case here from such court intended to assert a Federal right."

In the case at bar the record will be searched in vain for any allegation or averment that plaintiff claimed any Federal right or sought to raise any Federal question. The declaration, or petition as it is called in Missouri, contains no such allegation, nor any averment other than plaintiff's right to the possession of the property therein described, and its detention by the defendant. The answer consists of a denial of these averments, and affirmative pleas in various forms, of the Statute of Limitations. The replication denies generally the affirmative matters so brought forward by way of defense. The pleadings certainly, therefore, draw no Federal right in question. The bill of exceptions sets forth in detail the occurrences upon the hearing in the trial court. Nowhere and at no time, as the facts are preserved in the bill, will any allusion be found to such question. The Oxley case then applies with full force.

Nor would it avail plaintiff if some reference to a Federal question had been made upon the trial. *She was bound to set it up specially.* That is, she was bound to plead it. In *Columbia Water Power Company v. Columbia Electric Street Railway Light & Power Co.*, 172 U. S. 475, the distinction is pointed out between cases drawing in question.

(1) The *validity* of a treaty, or statute of, or authority exercised under the United States, and the decision is *against* their validity.

(2) The *validity* of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is *in favor of* their validity; and

(3) Where any title, right, privilege or immunity is claimed under the constitution or any treaty or statute of, or commission held, or authority exercised under the United States, and the decision is *against* the title, right, privilege or immunity *specially set up and claimed* by either party under such constitution, statute, commission or authority.

As to the first two classes it is held to be sufficient if the Federal question appears in the record and was decided, or was necessarily involved, and the case could not have been determined without deciding such question, although it was not specially set up and claimed. In this case, however, the *validity* of neither the patent nor of any statute was involved.

But as to the third class the court, through Mr. Justice Brown, says:

"There is no doubt that under the third class the Federal right, title, privilege or immunity must be, with possibly some rare exceptions, *specially set up or claimed*, to give this court jurisdiction. *Spies v. Illinois*, 123 U. S. 131, 181; *French v. Hopkins*, 124 U. S. 524; *Chappell v. Bradshaw*, 128 U. S. 132; *Baldwin v. Kansas*, 129 U. S. 52; *Leeper v. Texas*, 139 U. S. 462; *Oxley Stave Co. v. Butler County*, 166 U. S. 648."

It therefore follows that even though there was a Federal question involved in the determination of this case in the State court, the right to be heard here on writ of error cannot be insisted upon by plaintiff, because no authority exercised under the United States was specially set up or claimed.

The same conclusion was recently announced in an opinion written for the court by the Chief Justice in the case of *Speed v. McCarthy*, 181 U. S. 269, decided April 29, 1901, wherein it was said:

"It is objected that jurisdiction of this writ of error cannot be maintained because no title or right was specially set up or claimed within section 709 of the Revised Statutes. But plaintiffs in error contend that while they admit that they made no specific reference to the Statutes of the United States, their pleading nevertheless showed that they *asserted title through valid mining claims* duly located, and denied the title of the defendant in error, on the ground that the locations under which he claimed had become forfeited and abandoned, and that that was a sufficient compliance with the requirements of section 709. We cannot concede that this is so in view of the rule expounded in *F. G. Oxley Stave Co. v. Butler County*, 166 U. S. 648, and many other cases, and are the less disposed to that conclusion, as the case might well be held to have been decided on grounds independent of Federal questions."

In the same opinion the court also makes the following observations, which are quite pertinent in this case, in view of the fact that the Labeaume patent was not questioned; and in view of the further fact

that the opinion of the State Supreme Court was also based upon an agreement made in behalf of plaintiff in error, to be bound by a plat offered in evidence in her case in chief, whereon this very property to the possession of which she claims to be entitled, is designated as wharf. (See page 10 of printed transcript.) The Court says:

"Whether a party is estopped or not is not a Federal question. *Gillis v. Stinchfield*, 159 U. S. 168; *Pittsburg & L. A. Iron Co. v. Cleveland Iron Min. Co.*, 178 U. S. 270. Having determined that for the purposes of this action the Tin Bar claims were to be regarded as *valid in their inception*, the Supreme Court considered the controversy as to the right of a co-tenant to relocate a mining claim when the original assessment work has not been done, and obtain title as against his co-tenants. * * * The State court thus disposed of this branch of the case upon general principles of law, and its decision did not rest on the disposition of a Federal question."

And so in the case at bar, the Supreme Court of Missouri not only determined upon general principles of law that the property embraced in the Labeaume patent did not extend to the river, and was therefore not entitled to riparian rights, but upon general principles of law decided also that the plaintiff was not entitled to recover because upon the plat made some 22 years before the action was instituted, and by which plat she agreed in open court to be bound, the premises in dispute were designated as a part of the wharf, and not as private property. Whether the Supreme Court of Missouri was right or wrong in the latter conclusion is immaterial here, for it is a question

which was within its jurisdiction and with which this court is not concerned.

IV.

That the claim of a Federal right comes too late, so far as the revisory power of this court is concerned, when set up for the first time after final decision of the case by the Supreme Court of a State, whether the claim be made in a petition for rehearing or in the petition for a writ of error, or in the assignment of errors, has been so often announced by this court that we content ourselves with a mere reference to the cases cited in this brief.

Nor do we deem it necessary to enter into a discussion of the proposition that the plaintiff in error having parted, by conveyance, with all interest in the land which is the subject of this action, this writ must be dismissed. As between her and the defendant no controversy longer exists and under the cases referred to in the brief but one result follows, and that is dismissal.

For the reasons, therefore, that no Federal question was or is involved; that no Federal claim or right was specially set up or claimed; that if such claim can be found it was made after final judgment in the State court of last resort, and, therefore, too late; and that plaintiff in error has no further interest in this proceeding, and that no controversy therefore exists between the parties, it is respectfully submitted that the motion herein should be granted.

B. SCHNURMACHER,
CHAS. CLAFLIN ALLEN,
Attorneys and Counsel for Defendant in Error.

EXHIBIT A.

This indenture, made on the 17th day of April, A. D., one thousand eight hundred and ninety-five (95) by and between Martha J. Sweringen, a single woman, of the City of St. Louis and State of Missouri, party of the first part, and Arthur B. Barret, S. Harper Barret and Thos. A. Russell, of the City of St. Louis, and State of Missouri, parties of the second part, Witnesseth: That the said party of the first part, in consideration of the sum of Five Thousand Dollars, to her paid by the said parties of the second part, the receipt of which is hereby acknowledged, does by these presents, remise, release and forever quit claim unto the said parties of the second part, the following described Lots, Tracts or Parcels of Land, lying, being and situate in the City of St. Louis and State of Missouri, to-wit: All that portion of land lying and being situate between the Mississippi River and a line west of said river, surveyed and designated on the plat in the office of the Harbor and Wharf Commissioner of said city, for and purporting to be the western line of a wharf, which said land was formed as a portion of accretions to City Block No. 2544 of said city. *And being the same land sued for by the grantor herein in two actions pending in the Circuit Court of said City of St. Louis*, brought to the June Term, 1895. One of said suits being against the City of St. Louis and Justin E. Joy and numbered 125 of said term, and the other being against the St. Louis, Keokuk and Northwestern Railroad Company and numbered 126 of said term. To have and to hold the same, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said par-

ties of the second part, and their heirs and assigns forever, so that neither the said party of the first part, nor her heirs, nor any other person or persons for her or in her name or behalf shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every one of them shall by these presents be excluded and forever barred. In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

MARTHA J. SWERINGEN [Seal].

State of Missouri, } ss.
City of St. Louis. }

On this 18th day of April, 1895, before me, personally appeared Martha J. Sweringen, a single woman, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed. And the said Martha J. Sweringen further declared herself to be single and unmarried.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in St. Louis, the day and year first above written.

My term expires November 16, 1899.

LIZZIE J. HUDSON, Notary Public.

Copy of Seal: Lizzie J. Hudson,
Notary Public, City of St. Louis, Mo.

Filed and recorded Oct. 20, 1898, at 12:12 p. m.

M. D. LEWIS, Recorder.

State of Missouri, } ss.
City of St. Louis. }

I, the undersigned, Recorder of Deeds of said City and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Martha J. Sweringen to Arthur B. Barret et al., together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in book 1466, page 281.

In witness whereof I have hereunto set my hand and official seal this 13th day of May, A. D. 1901.

[Seal]. WM. H. HAHN, Recorder

EXHIBIT B.

U. S. Rev. Stamp,
50c. A. B. B. 10-22-98.

This indenture, made on the twenty-second day of October, A. D. one thousand eight hundred and ninety-eight, by and between Arthur B. Barret, a single man of the City of St. Louis and State of Missouri party of the first part, and Annie T. King of the City of St. Louis and State of Missouri party of the second part, witnesseth: that the said party of the first part, in consideration of the sum of Five Hundred dollars, to me paid by the said party of the second part, the receipt of which is hereby acknowledged, does by these presents remise, release and forever quit claim unto the said party of the second part the following described lots, tracts or parcels of land, lying, being and situate in the City of St. Louis and State of Missouri, to-wit: An undivided one-third interest in a certain parcel of land situated in the City of St. Louis and State of Missouri, to-wit: All that portion of land lying and being sit-

uate between the Mississippi River and a line west of said river, surveyed and designated on the plat in the office of the Harbor and Wharf Commissioner of said city for and purporting to be the western line of a wharf which said land was formed as a portion of accretions to city block No. 2544 of said City, and being the same land sued for by the former grantors in two actions pending in the Circuit Court of said City of St. Louis, brought to the June term, 1895, one of said suits being against the City of St. Louis and Justin E. Joy, and numbered 125 of said term, and the other being against the St. Louis, Keokuk and Northwestern Railroad Company, and numbered 126 of said term. To have and to hold the same with all the rights, immunities, privileges and appurtenances thereto belonging unto the said party of the second part and her heirs and assigns forever, so that neither the said party of the first part nor his heirs, nor any other person or persons for him or in his name or behalf shall or will hereafter claim or demand any right or title to the aforesaid premises or any part thereof, but they and every one of them shall by these presents be excluded and forever barred. In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

ARTHUR B. BARRET [Seal.]

State of Missouri, } ss.
City of St. Louis. }

On this 22d day of October, 1898, before me personally appeared Arthur B. Barret, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed

the same as his free act and deed. In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in City of St. Louis, Mo., the day and year first above written. My term expires March 3d, 1902. George L. Neuhoff, Notary Public, in and for City of St. Louis and State of Missouri.

Copy of Seal: George L. Neuhoff,
Notary Public, City of St. Louis, Mo.

Filed and recorded Oct. 22d, 1898, at 2:55 p. m.

M. D. LEWIS, Recorder.

State of Missouri, } ss.
City of St. Louis. }

I, the undersigned Recorder of Deeds for said City and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Arthur B. Barret to Annie T. King, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in book 1470 at page 501.

In witness whereof, I have hereunto set my hand and official seal this 13th day of June, A. D. 1901.

WM. H. HAHN,
[Seal.] Recorder.

EXHIBIT C.

United States of America, }
Eastern Division of the Eastern Judicial } ss.
District of Missouri. }

In the Circuit Court of the United States in and for the Eastern Division of said district.

Be it remembered, That on the 22nd day of July, A. D. 1899, there was filed in the Clerk's Office of said

Court a certain petition, in words and figures as follows, to-wit:

(Petition).

United States of America. }
Eastern District of Missouri. } ss.

In the Circuit Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri.

Arthur B. Barret, S. Harper Barret, and Thomas A Russell,	Plaintiffs,	September Term, 1899.
vs.		
City of St. Louis and Justin E. Joy,	Defendants.	

Plaintiffs state that defendant City of St. Louis is a municipal corporation in the State of Missouri.

Plaintiffs further state that as the legal representatives of Louis Lebeaume, and under and by virtue of letters patent of the United States, issued to said Louis Lebeaume or his legal representatives, bearing date the twenty-fifth day of March, 1852, signed by Millard Fillmore, President of the United States, with the seal of the General Land Office thereunto affixed, and recorded in said General Land Office, they became the owners of and entitled to the possession of the following described real estate, on the eighteenth day of April, A. D. 1895, situate in the City of St. Louis and State of Missouri, to-wit:

Bounded on the East by the Mississippi River; on the west by the east line of city block number 2544 of said city, the latter line being the same as a line sur-

veyed for the western line of a contemplated wharf under city ordinance number 5403 of said city; on the south by a line parallel with and sixty feet north of the north line of Dock street of said city extended to the Mississippi River, and on the north by a line parallel with and one hundred and fifty feet north of said north line of said Dock street extended as aforesaid to said river, which said real estate exceeds the value of five thousand dollars.

Plaintiffs further state that by an act of Congress of the United States, entitled: "An Act authorizing documentary evidence of titles to be furnished to the owners of certain lands in the City of St. Louis," approved June 12th, 1866, it is provided as follows: "Sec. 9. And be it further enacted, That all of the right, title and interest of the United States in and to all of the wharves, streets, lanes, avenues, alleys, and other public thoroughfares which are situate, lying and being within the corporate limits of the City of St. Louis, in the State of Missouri, shall be, and the same are hereby, granted, relinquished, and conveyed by the United States, in fee simple and in full property, to the said City of St. Louis, and to the successors and assigns forever of said city; Provided, however, That no individual rights, or titles acquired previously hereto, shall be in any manner impaired or prejudiced hereby."

Plaintiffs further state, that being so entitled to the possession of said real estate, the defendants afterwards, to-wit, on said eighteenth day of April, 1895, entered into such premises, claiming the same as wharf, and unlawfully withhold from plaintiffs the possession thereof, to their damage in the sum of five thousand dollars. They further aver that the monthly

value of the rents and profits of said premises is one hundred dollars. Wherefore they demand judgment for the recovery of the premises, and five thousand dollars damages for the unlawfully withholding the same from plaintiffs, and one hundred dollars for monthly rents and profits, from the rendition of judgment until the possession of the premises is delivered to plaintiffs, and for other proper relief.

THOS. A. RUSSELL, pro se,
E. P. JOHNSON,
Attorney for Plaintiffs.

Upon the filing of said petition there was issued out of the Clerk's office of said Court a summons which, with the Marshal's return of service endorsed thereon, is in words and figures as follows, to-wit:

(Summons).

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri. } sct.

In the Circuit Court of the United States, in and for the Eastern Division of said district.

The President of the United States of America to the Marshal of the United States in and for said district, Greeting:

You are hereby commanded to summon City of St. Louis and Justin E. Joy, citizens of the State of Missouri, that they be and appear before the Honorable Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, on the first day of the next term thereof, to be holden at the City of St. Louis, in and for the Eastern

Division of said district, on the third Monday of September next, then and there to answer the complaint of Arthur B. Barret, S. Harper Barret and Thomas A. Russell, as set forth in the petition filed in said Court on the 22nd day of July, A. D. eighteen hundred and ninety-nine.

Hereof fail not and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 22nd day of July, A. D. eighteen hundred and ninety-nine.

Issued at office, in the City of St. Louis, under the seal of said Circuit Court, the day and year last aforesaid.

[Seal.] T. L. CRAWFORD, Clerk.

(Marshal's Return).

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri. } sct.

I certify that I executed this writ at the City of St. Louis, in the above named district, on the 24th day of July, 1899, by delivering a certified copy thereof and a copy of the petition in this cause as furnished by the Clerk to Henry Ziegenhein, Mayor of the within named Defendant Corporation, the City of St. Louis.

I certify that I further executed this writ at the City of St. Louis, in the Eastern Judicial District of Missouri, on the 14th day of August, 1899, by delivering a certified copy thereof to the within named Defendant, Justin E. Joy.

LOUIS C. BOHLE,
U. S. Marshal, Eastern District of Missouri.

And afterwards, to-wit: On the 18th day of September, A. D. 1899, there was filed in said cause a Plea to Jurisdiction, in words and figures as follows: to-wit:

(Plea to Jurisdiction).

United States of America, }
Eastern District of Missouri. } ss.

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Arthur B. Barrett, S. Harper Barrett, and Thomas A Russell, Plaintiffs, vs. City of St. Louis and Justin E. Joy, Defendants. } No. 4217.

Now comes the City of St. Louis, one of the defendants in the above entiled cause, and appearing for the purposes of this pleading only, filed this, its plea, to the jurisdiction of the court, and for grounds of such plea, avers:

1. The court is without jurisdiction to try the case set forth in the petition.

2. It appears upon the face of the petition that the matter in dispute does not arise under the Constitution or laws of the United States; nor relate to any subject matter, which by the statutes of the United States is made the subject of jurisdiction of this court; nor is there any averment that the cause of action is between persons of diverse citizenship within any provision of the statutes of the United States.

3. It does not appear upon the face of the petition that any right, title, privilege or immunity, on which recovery depends, would be defeated by one construction of the Constitution, or any law or treaty of the United States, or sustained by an opposite construction.

4. This court has no jurisdiction of the subject matter of the cause of action sought to be stated in the petition.

5. This court has no jurisdiction of the parties plaintiff or defendant, or either or any of them, under any cause of action sought to be stated in the petition.

6. No federal question is involved in any averment or averments contained in the petition.

B. SCHNURMACHER,
CHAS. CLAFLIN ALLEN,
Attorneys for Defendants,
The City of St. Louis.

And afterwards, to-wit: On the 18th day of October, A. D. 1899, the following among other proceedings were had and appear of record in said cause, to-wit:

(Plea to Jurisdiction sustained).

Arthur B. Barret, et al., Plaintiffs,
vs.
City of St. Louis, et al., Defendants.
No. 4217.

The Court having considered the plea to jurisdiction heretofore submitted herein.

It is ordered that said plea be sustained.

And afterwards, to-wit: On the 23rd day of October, A. D. 1899, there was filed in said cause an Amended Petition, in words and figures as follows, to-wit:

(Amended Petition).

United States of America,
Eastern District of Missouri. } ss.

In the Circuit Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri.

Annie F. King, S. Harper Barret and Thomas A. Russell,		September Term, 1899.
vs.	Plaintiffs,	
City of St. Louis and Justin E. Joy,	Defendants.	

Plaintiffs, for amended petition filed by leave of Court, state that defendant City of St. Louis is a municipal corporation in the State of Missouri.

Plaintiffs further state that under and in pursuance of an Act of Congress of the United States, approved March 3rd, 1807, entitled "An Act respecting claims to land in the Territories of Orleans and Louisiana," letters patent of the United States were issued to Louis Lebeaume or his legal representatives, bearing date the 25th day of March, 1852, signed by Millard Fillmore, President of the United States, with the seal of the General Land Office thereunto affixed, and recorded in said General Land Office, whereby there were granted to said Louis Lebeaume or his legal representatives, the land embraced in United States Survey No. 3333, containing three hundred and thirty-nine

and sixty-eight one hundredths (339.68) acres, in Township forty-five (45) North, Range seven (7) East of the fifth principal meridian, in said City of St. Louis, and lying on the west bank of the Mississippi River.

That plaintiffs as such legal representatives of Louis Lebeaume, became the owners of the real estate hereinafter described, under and by virtue of said letters patent, and that a controversy has arisen between them and the defendants herein as to the proper construction of said letters patent, wherein it is claimed by the plaintiffs, and they so state the fact to be, that under and by virtue of said letters patent said river is the eastern boundary of said survey number 3333, and that the said Louis Lebeaume or his legal representatives were granted all of the land lying on said west bank of said river, between the northern and southern boundary lines of said United States survey number 3333, to said river, and that they were thereby constituted riparian proprietors and owners of all of the land along said river bank between said north and south lines of said survey, and were thereby vested with the title to, and ownership of, all land thereafter formed by accretions or gradual deposits from said river along said west bank thereof, between said north and south lines of said United States survey, where a large body of land was formed by accretions to said survey number 3333.

That said claim of plaintiffs as to the proper construction of said patent, is disputed by defendants, and contested by them in regard to the title to the land hereinafter described, and which land is a portion of the land formed by accretions or gradual deposits from said river, along said west bank thereof, between said north and south lines of said United States

survey, and which thereby became a portion of the land granted by said letters patent, and is the land herein sued for.

That said disputed question between plaintiffs and defendants, as to the proper construction of said letters patent, constitutes the controlling question in this case upon the correct decision of which the plaintiffs' title to the premises sought to be recovered herein depends, and they therefore aver that this suit arises under the laws of the United States and said letters patent issued in pursuance threof.

They further state that as such legal owners of the premises they were entitled to the possession of the same under and by virtue of said letters patent, on the 18th day of April, 1895, which are described as follows:

Bounded on the east by the Mississippi River; on the west by the east line of City Block number 2544 of said City, the latter line being the same as a line surveyed for the western line of a contemplated wharf under City Ordinance number 5403 of said City; on the south by a line parallel with and sixty feet north of the north line of Dock street of said City extended to the Mississippi River, and on the north by a line parallel with and one hundred and fifty feet north of said north line of said Dock street extended as aforesaid to said river, which said real estate exceeds the value of two thousand dollars.

Plaintiffs further state that by an Act of Congress of the United States, entitled, "An Act authorizing documentary evidence of Title to be furnished to the owners of certain lands in the City of St. Louis," approved June 12th, 1866, it is provided as follows:

"Sec. 9. And be it further enacted, That all of the right, title and interest of the United States in and to all of the wharves, streets, lanes, avenues, alleys and other public thoroughfares which are situate, lying and being within the corporate limits of the City of St. Louis, in the State of Missouri, shall be, and the same are hereby, granted, relinquished, and conveyed by the United States, in fee simple and in full property, to the said City of St. Louis, and to the successors and assigns forever of said City; Provided, however, That no individual rights, or titles acquired previously hereto shall be in any manner impaired or prejudiced hereby."

Plaintiffs further state that being so entitled to the possession of said real estate herein described and alleged to be a portion of the accretions to said survey number 3333, the defendants afterwards, to-wit, on said eighteenth day of April, 1895, entered into such premises, claiming to own the same as wharf under and by virtue of said Section 9 of said last named Act of Congress, and in pursuance of said Ordinance number 5403 of said City, approved August 6th, 1864, entitled, "An Ordinance to open and establish the wharf from Biddle street to the northern boundary of the City, and from Hazle street to the southern boundary of the City," providing for the condemnation of the same as a portion of the wharf of said City; and unlawfully withhold from plaintiffs the possession thereof, to their damage in the sum of five thousand dollars. They further aver that the monthly value of the rents and profits of said premises is one hundred dollars.

Wherefore, they demand judgment for the recovery of the premises, and five thousand dollars dam-

ages for the unlawful withholding the same from plaintiffs, and one hundred dollars for monthly rents and profits, from the rendition of judgment until the possession of the premises is delivered to plaintiffs, and for other proper relief.

THOS. A. RUSSELL, pro se,
E. P. JOHNSON,
Attorney for Plaintiffs.

And afterwards, to-wit: on the 22d day of December, A. D. 1899, there was filed in said cause, the separate answer of the City of St. Louis, in words and figures as follows, to-wit:

(Separate Answer of The City of St. Louis.)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Annie F. King, S. Harper Barret and Thomas A. Russell,		
vs.	Plaintiffs,	No. 4217.
The City of St. Louis and Justin E. Joy,		
	Defendants.	

Now comes the defendant, the City of St. Louis, and by leave of court first obtained, files this, its separate answer to the petition of plaintiff, and for such answer denies each and every allegation in said petition contained.

II.

And for a further answer to said petition this defendant avers that it has had open, notorious, continu-

ous and adverse possession of the premises described in said petition, under claim and color of title, for more than ten years next before the filing of said petition.

III.

And for a further answer to said petition, this defendant avers that the property described in plaintiff's petition has been in adverse use and occupancy of this defendant, the City of St. Louis, as a public wharf of said city, for a period of more than ten years prior to the filing of said petition, and said land has been held by the City of St. Louis and has been used by the public as such public wharf during said period of time, and that said plaintiffs and those under whom they claim, have acquiesced in said public use, and are estopped to deny the same.

IV.

And for a further and separate answer and defense, this defendant says that neither the plaintiffs, nor their ancestors, predecessors, grantors, or the persons under whom they claim, were seized or possessed of the premises described in the petition and in question in this case, within ten years before the commencement of this action.

Further answering, this defendant avers that heretofore, Martha J. Sweringen, the grantor of the plaintiffs in this action, and under whose title alone the plaintiffs herein claim a right to recover, filed her suit in ejectment, to the June Term, 1895, of the Circuit Court of the City of St. Louis, against the same defendants as are made defendants herein, to-wit, the

City of St. Louis and Justin E. Joy, which said suit was numbered 99865, in Court Room No. 6 of said Circuit Court of the City of St. Louis, and in which said suit said plaintiff sought to recover possession and damages for the unlawful withholding from the plaintiff of the same property herein made the subject of suit by these plaintiffs.

Thereafter, and on June 3, 1895, the defendant, Justin E. Joy, filed an answer to the petition of plaintiff therein, in the form of a general denial; and thereafter this defendant, the City of St. Louis, by leave of court, filed its separate answer, containing the same four defenses hereinbefore in this answer set forth.

And thereafter the plaintiff filed as a reply to the separate answer of this defendant, the City of St. Louis, a general denial of the allegations of said answer.

Thereafter such proceedings were had in such cause that on the 2d day of December, 1896, the court found the issues in favor of plaintiff and adjudged that the plaintiff recover of the defendants the possession of the premises now here in suit, and also recover of the defendant, the City of St. Louis, the sum of five thousand dollars for detention thereof, and the value of the monthly rents and profits, which the court found to be the sum of one hundred dollars.

Thereafter such proceedings were had that the motions for new trial, filed by the defendants, were overruled, and the defendant, the City of St. Louis, appealed said cause to the Supreme Court of Missouri.

Thereafter, on June 15, 1899, the Supreme Court of Missouri reversed the said cause, without remanding

the same, and adjudged that the plaintiff, Martha J. Sweringen, had no title to the property in controversy.

This defendant avers that said judgment of the Supreme Court was rendered upon the ground, and for the reason, that the patent of the United States to Louis Lebeaume, for property to which the land in controversy was claimed as an accretion, did not convey land bounded by the Mississippi River, because by the description in said patent the eastern boundary of said land was a permanent line fixed by courses and distances, metes and monuments, between high and low water mark, and included a definite number of acres called for by said patent and shown specifically upon the plat, which was made a part of said patent, as a description of the land described in said patent.

And this defendant avers that by said prior adjudication of the title to the premises here in controversy, the plaintiffs are barred from maintaining this action.

This defendant further avers that the adjudication by the Supreme Court is of a matter entirely within the jurisdiction of the courts of Missouri, and especially of said Supreme Court, and is binding upon this court in this action, for the reason that the question herein involved is a matter of State law, and does not involve any question affecting the Constitution or laws of the United States, or relating to any subject matter which, by the laws of the United States, is made the subject of jurisdiction of this court.

Wherefore, this defendant, objecting and protesting to the jurisdiction of this court, files this, its sep-

arate answer, to the petition of plaintiffs herein, and prays that it may be hence discharged with its costs.

B. SCHNURMACHER,
CHAS. CLAFLIN ALLEN,
Attorneys for Defendants,
The City of St. Louis.

And afterwards, to-wit: on the 16th day of May, A. D. 1900, the following further proceedings were had and appear of record in said cause, to-wit:

(Judgment.)

Annie F. King, S. Harper Barret and Thomas E. Russell, Plaintiffs, vs. City of St. Louis and Justin E. Joy, Defendants.	No. 4217.

Now, at this day, come said parties by their respective attorneys, and this cause having been submitted to the court upon the evidence and proofs adduced (a jury having been waived), and the court being now fully advised of and concerning the premises, doth find the issues herein enjoined in favor of the defendants.

It is therefore considered by the court that the plaintiffs, Annie F. King, S. Harper Barret and Thomas A. Russell, take nothing by their suit in this behalf, and that said defendants, City of St. Louis and Justin E. Joy, go hence without day and recover of said plaintiffs their costs and charges herein expended and have execution therefor.

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Annie F. King, et al., Plaintiffs, vs. City of St. Louis, et al., Defendants.	No. 4217.
Wilford P. Joy, Plaintiff, vs. City of St. Louis, et al., Defendants.	No. 4225.
Tyler Estate, Plaintiff, vs. City of St. Louis, et al., Defendants.	No. 4266.

Memoranda of Judge Adams on Final Hearing.

May 16, 1900.

In the light of the Spanish concession and the survey thereof by Soulard, as found in the patent to Louis Labeaume or his legal representatives, and the survey of the Surveyor General for Illinois and Missouri made in 1852, all thereof being examined and considered for the purpose of ascertaining the intent of the United States in fixing the eastern boundary of Survey 3333, and of placing the true construction upon the grant of the United States to Louis Labeaume, I have reached the conclusion that the eastern boundary of survey 3333 is the meander line of the Mississippi River and not the line actually fixed by courses and distances in the survey.

Louis Labeaume acquired his rights to the land in question by virtue of a concession from the Lieutenant Governor of the Spanish Province of Upper Louisiana, surveyed in 1799 by the Spanish surveyor, A. Soulard.

All the proceedings of the United States concerning this land since that day have been taken, not to confer any new right upon Labeaume or his legal representatives, but for the purpose of ascertaining what his rights were as conferred by the original Spanish concession. By the provisions of the treaty of Paris, the rights of all persons duly acquired either under Spanish or French laws, were to be recognized and respected by the United States, therefore whatever rights Labeaume acquired by virtue of the Spanish concession, were rights which the United States had by treaty agreed to respect. Now, what were those rights? The Spanish survey, a copy of which appears in the patent issued by the United States to Louis Labeaume, or his legal representatives, in 1852, clearly shows to the eye that the eastern boundary of the tract in question was the Mississippi River. The United States at the time it granted the patent in 1852 so understood it. There are many references in the patent indicating the purpose of the United States to respect the rights of Labeaume as obtained from Spain; for instance, it is said in the patent, "whereas, it further appears from the aforesaid patent certificate (referring to one deposited in the General Land Office) that pursuant to the decision on the 25th day of July, 1851, of the Secretary of the Interior, those claiming under Labeaume are entitled to a patent for the land according to Soulard's survey and Labeaume's possession, and that the lines of said Soulard survey have been retraced in conformity with the decision referred to."

This excerpt from the patent in question clearly shows that the Secretary of the Interior had determined that Labeaume was entitled to the land accord-

ing to Soulard's survey, and that the survey on which the patent was issued was a mere retracing of the lines of the Soulard survey. Again, there appear in the patent the following remarks: "The survey of this tract, as made by A. Soulard in March, one thousand seven hundred ninety-nine, a copy of which as attached hereto represents the area thereof to be 374 arpens, there being 25 arpens and thirty one-hundredths of an arpen, equal to 21 52-100 of an acre less than found by this survey, but as no notes of Soulard's survey describe the meanders of the Mississippi River and of the Rocky Branch, the former bounding the tract on the east and the latter in part on the north, there are therefore no means to ascertain whether the difference or excess in the area of this survey over that given by Soulard is owing to a miscalculation by said Soulard, or to the subsequent accretion along the bank of the Mississippi River since Soulard's operations. This accretion appears to be rapidly advancing. That portion of the tract eastward of the high bank, shown topographically on the foregoing plat, the top of which is designated by the dotted line a, b, c, d, e and f, appears to be the accretions since Soulard's time and consists of about 14 acres."

The foregoing excerpt from the patent, taken in connection with the plat or survey 3333, clearly indicates to my mind that the government of the United States in issuing the patent in question not only undertook to survey Labeaume into the land called for by the Spanish concession, but in terms declared that Soulard's survey of the Spanish concession bounded the tract on the east by the Mississippi River. Not only so, but that excerpt shows that there were granted to Labeaume, or his legal representatives, by

the patent in suit at least 14 acres of accretions which had been formed since the time of the Soulard survey. These excerpts clearly recognize not only that the land is bounded on the east by the Mississippi River, which fact as a proposition of law entitles the patentee to the accretions, but also that accretions had been forming and were still forming, and that all accretions then in 1852 formed, belong to the patentee.

The foregoing evidences of intention as manifested by an inspection of the four corners of the grant are too strong to be ignored by anything less that a palpable and clear statement of the government to the contrary, but I find no such palpable or clear statement anywhere in the patent. It is true that the eastern boundary line of survey 3333, as surveyed by Clark in 1852, can be traced without reference to the river. The courses and distances are definite and clear, but it is to be noted that this line starts on the north by what is called point "F," in the mouth of Rocky Branch. From this point the survey reads as follows: "From the corner 'F' down the right bank of the Mississippi River with the meanders thereof between high and low water mark." Certain courses and distances then are given, ending at the place of beginning. The beginning corner was a stake set on the right bank of the Mississippi River between high and low water mark. Apart from all the indications and intentions shown by a consideration of the language of the patent, it is, to say the least, under the authorities very doubtful, if the eastern boundary line of the survey, commencing as it does at the mouth of the Rocky Branch and running down the river with the meanders thereof between high and low water mark and ending

with a point on the river between high and low water mark, would not of itself clearly and unquestionably bound the survey on the east by the river. But conceding that this is doubtful, when taken in connection with the other provisions of the patent, the doubt in my opinion is cleared up and the river must be held to be the eastern boundary of survey 3333.

This conclusion entitles the plaintiffs in these cases to the land in question as accretions unless some one of the affirmative defenses pleaded by the defendants is made out. These defenses are:

(1) Adverse possession on the part of the City of St. Louis and its grantees for a period of at least ten years.

(2) Want of possession on the part of the plaintiffs, or those under whom plaintiffs claim, for a period of ten years prior to the institution of these suits.

(3) Dedication by the plaintiffs of the land in controversy for the use of a public wharf by the city.

There is no sufficient evidence to sustain the technical defense of adverse possession on the part of the City of St. Louis for a period of time which gives it a title in fee simple to the ground in controversy.

It is a fact that the plaintiffs have never been in actual possession of the land in dispute, and of course they were not in actual possession thereof for ten years immediately prior to the institution of these suits, but in my opinion this last mentioned fact constitutes no defense to the plaintiffs' right of action. Notwithstanding the plaintiffs have not been in actual possession, they have been so far as this defense is

concerned in that constructive possession and seisin which follow the ownership of the legal title, and in my opinion that kind of possession, in the absence of actual adverse possession by the city, is sufficient under the statutes of the State of Missouri to entitle the plaintiffs to maintain an action in ejectment for the land.

The next defense is that the plaintiffs by divers acts, both of omission and commission, have dedicated the lands in question to public use.

This is an issue resting essentially in intent. All that is required is that the owner should have assented to the appropriation of his property for public use, and that the same should have been so used by the public. No particular form of words is required to constitute a dedication. All that is necessary is to find an unequivocal intention on the part of the owner to dedicate his land to the use of the public. In order to correctly determine this issue of intent reference should properly be had in the first instance to the situation of the parties, and to their understanding of their actual legal rights.

Prior to 1873, it seems that the Buchanan heirs, holding under the Rufus Easton Survey No. 2042, partitioned and platted their lands bounding the same on the south by Rocky Branch and on the east by the Mississippi River. This partition and plat included land as far south as Dock street and a little farther, in fact. The Easton survey, bounded as it was on the south by Rocky Branch, gave much color to the claim of ownership by the Buchanan heirs. If their claim was tenable, the Buchanan title cut off any right of plaintiffs to accretions, as such right would attach to the intercepting lands of the Buchanan heirs.

This being the condition of the title up to 1873, it may confidently be assumed that no strenuous contention was made before that date by plaintiffs to the accretions along the river. In that year, 1873, the Buchanan heirs and part of the Tyler heirs, whose lands bounded the Buchanan lands on the south, entered into an agreement fixing their division line some distance north of Dock street, and extending eastwardly to the river. This line so fixed by the Buchanan and Tyler heirs necessarily drew northward the lines of the Sweringen estate, which lie adjoining the Tyler lands on the south, and correspondingly drew northward the Joy tract, which lies next southward of the Sweringen tract. The Sweringen and Joy tracts were thus located for them by the agreement between the Buchanan and Tyler heirs, and although there is no evidence of Sweringen and Joy, or their grantors, joining in the agreement of 1873, by availing themselves of it, they of necessity adopted and must be affected by its true legal significance. According to the agreement of 1873, treating it as establishing the true southern line of the Buchanan tract, the plaintiffs' lots are extended through to the river, otherwise, that is apart from this agreement, they might or might not be so extended.

Such was the situation of the parties and of their respective claims in 1873, and it is in the light of this situation, among other things, that the final issue now being considered must be solved.

What was the plaintiffs' intention with respect to their lots in question?

They say they always asserted a claim of individual ownership over their respective lands to the river's

bank. Defendants say plaintiffs found a well defined line surveyed before 1873 and marked by stone posts indicating the west line of a public wharf running northwardly and southwardly along the river and recognized such line in 1873 when their right through the Buchanan tract was first established, and continued to so recognize it down to the institution of this suit, or the one heretofore instituted, for the same relief in the State court.

The facts relating to this issue are substantially as follows: Plaintiffs or either of them, or their grantors, have never taken actual possession of the land in question. The agreement of 1873 was written on a plat upon which the Tyler, Sweringen and Joy tracts appear in different colors, extending from City Block 308E eastwardly with figures fixed showing distances between city blocks and ending at the western boundary line of what is distinctly marked on the plat as wharf.

The wharf line is here distinctly recognized and in my opinion, notwithstanding the words of the agreement, state in substance that they have fixed the division line to the river, this language must be construed in connection with the plat on which it is written, which shows the subject matter with which the parties were dealing; and when so construed the agreement must be held to treat the river referred to in the agreement as beginning with the wharf line. The western wharf line was fixed by public ordinance of the City of St. Louis in 1864 and was soon thereafter surveyed and marked by well defined object calls. At the same time and by the same ordinance the eastern boundary line of the wharf was fixed some

three or four hundred feet east of the western line, and much rock and filling were dumped in the river along this eastern line so as to clearly indicate its position at least in times of low water.

It may confidently be asserted, I think, that in 1873 the Tyler estate, by becoming a party to this agreement and subsequently both the Sweringen estate and Joy by adoption of this agreement, recognized the existence of the wharf along their eastern line. Not only so, but plats appeared in the public offices of the city clearly asserting the existence of the wharf and referring as the source of the right of so locating and maintaining the wharf to a public ordinance of the city establishing the same. Another important fact appearing upon the dominant question of intention now under consideration is this: About the year 1874 or 1875 City Block 2544 first makes its appearance upon the plats of the city. This block appears to be laid out in conformity to the general plan theretofore adopted by the city in that region. This block extends from Buchanan street on the north to Dock street on the south and is bounded on the east by the west wharf line as established by ordinance 5403, already referred to. Thus bounding it on the east by the wharf line makes an irregular and triangular block with the lots much deeper eastwardly and westwardly along and nearer to Buchanan street than they are farther south towards Dock street. Immediately following the appearance of this city block among the plats of the city, the plaintiffs in these three cases, notably the Tyler estate and the Sweringen estate, again recognize the wharf line as the eastern boundary line of their several tracts by in some instances returning their lands for taxation as bounded on the east by the wharf line, and

in many instances describing the same as located in City Block 2544, stating depths and distances which limit their claims for taxation purposes to the property in that block and of necessity to the western wharf line as their eastern boundaries; and again in all instances, whether they actually made returns of their lands for taxes or not, they have paid taxes assessed by the city and State against them on lands bounded on the east by the western wharf line, and there is no evidence in this case that the plaintiffs, or either of them, ever seriously demurred or demurred at all to that limitation of their tax liability to lands on the west of the western wharf line. Even as late as 1897 or 1898 the Tyler heirs, in transferring their title to the Tyler Estate, a corporation formed to manage the estate of the Tyler heirs, defined and bounded their possession on the east by the west wharf line already indicated.

Again, in 1894, the Tyler Estate and Mrs. Sweringen had their property surveyed for the purpose of putting squatters off, as it is called, and this plat or survey distinctly bounds their possessions on the east by the west wharf line. This was acted upon and squatters were put off. There is no substantial evidence that any attempt was made to put off squatters from that part of the property lying east of the west wharf line.

In 1891 the city publicly asserted a claim to the wharf by passing ordinance No. 16,161, entitled "An ordinance to lease to Justin E. Joy a portion of the unimproved wharf at and north of the foot of Dock street," and afterwards, pursuant to the provisions of that ordinance, on April 20, 1891, by executing a lease to Mr. Joy in conformity to the provisions of the ordi-

nance. This lease gave Joy the full right to use all that part of the wharf excepting the right of way of the St. Louis, Keokuk and Northwestern Railroad Company, which before that time, as will hereafter appear, had secured a right of way over the wharf. In this lease to Joy the city reserved the right to permit steamboats, barges and other water craft to land at that wharf, and preserved the right to collect from them the lawfully established wharfage charges, and specially provided that the lessee, Joy, should never make any charges for landing at that wharf by any steamboats, barges or other water craft having business there. Joy took possession of the property so leased to him and immediately commenced the exercise of his right under his lease and has continued so to do up to the present time, using the same mainly as a lumber yard. The proof shows no objections to this action of the city until about the time this suit was brought. The proof also shows that in 1889 the city by public ordinance No. 15,367 authorized the St. Louis, Keokuk and Northwestern Railroad Company to use a certain portion of the western part of the wharf as its right of way for operating its railroad into and out of the City of St. Louis. Pursuant to the authority there conferred the railroad company soon thereafter expended large sums of money and constructed its railroad along that right of way and immediately commenced the use of the same and continued the use of the same to the present time. Notwithstanding these public assertions of right on the part of the city and notwithstanding the immediate occupancy of the wharf by parties under licenses from the city, as already stated, and notwithstanding their expenditure of large sums of money pursuant to the

rights conferred by the city, all of which the plaintiffs must be held to have known, there appeared no objections thereto, but on the contrary a manifest acquiescence therein up to about the time of this suit, or its predecessor, was instituted. I cannot view these divers and many public and private acts of the parties and acquiescence therein by the plaintiffs in any other light than as the strongest evidence of an intention on their part to recognize the western wharf line as laid out pursuant to the ordinance of 1864, as their eastern boundary line, and as effectually dedicating any right, title or interest, which they might have had thereto, to the public use as and for a wharf.

All these divers acts already enumerated, both actively and passively on the part of the plaintiffs themselves, and actively on the part of the City of St. Louis, and those claiming under it, acquiesced in by the plaintiffs, are acts of estoppel in pais which afford the strongest evidence of public dedication.

I have not overlooked the testimony concerning the Lemon lease introduced in evidence by the plaintiffs, or the other evidences showing their assertion of claims of rents and otherwise, but it is perfectly clear that these evidences relate to property considerably west of the western wharf line and afford no substantial evidence of an intent different from that already referred to with respect to the property east of the west wharf line. The evidence of dedication resting in estoppel in pais is somewhat stronger with reference to the Tyler tract and the Sweringen tract than it is in relation to the Joy tract, but I think there is ample evidence to reach the same conclusion even with respect to the Joy tract. It is firmly settled by

adjudications of the Supreme Court of this State that no person can deliberately stand by and see improvements placed upon property which they claim or might claim, and, after large sums of money have been expended, successfully assert a claim contrary to their former intentions. It is needless to refer to these authorities. They are entirely familiar to counsel.

I have considered the contention of plaintiffs' counsel to the effect that the City of St. Louis by conferring a right of way upon the railroad and leasing the wharf to Joy have been guilty of a misuser. I cannot appreciate the force of this contention. It certainly appears that the city has by many and divers public acts asserted a claim of ownership to this property as one of its public wharfs, and this claim has been, in my opinion, fully acquiesced in by the plaintiffs and each of them. Even if it be true that there has been any misuser, it cannot be availed of by the plaintiffs in this case as a defense of the rights of the City of St. Louis.

The defendants are entitled to judgment in each of the cases, and such will accordingly be entered.

United States of America,
Eastern Division of the
Eastern Judicial District of Missouri. } ss.

I, James R. Gray, Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify the writing hereto attached to be a true copy of petition, summons and marshal's return, plea to jurisdiction, order sustaining plea to jurisdiction, amended petition, separate answer, judgment and opinion on

final hearing in Case No. 4217, of Annie F. King, et al., plaintiffs, against City of St. Louis, et al., defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the City of St. Louis, in the eastern division of said district, this 17th day of July, in the year of our Lord nineteen hundred and one.

[Seal] JAMES R. GRAY,
Clerk of said Court.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

MARTHA J. SWERINGEN,
Plaintiff in Error,

vs.

THE CITY OF ST. LOUIS,
Defendant in Error.

No. 187.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This cause was brought to this court on writ of error to the Supreme Court of the State of Missouri, from a judgment entered in said court, reversing the judgment of the Circuit Court of the City of St. Louis, Missouri, which was in favor of the plaintiff, and entering judgment for the defendant.

The action is one in ejectment, wherein the plaintiff seeks to recover a considerable portion of the north wharf of the City of St. Louis, but on the trial she limited her claim to a narrow strip beginning 60 feet north of Dock street, and extending 90 feet wide between parallel lines from the western line of the wharf eastwardly to the Mississippi River.

The description of the property in the petition is, therefore, entirely misleading in that it includes a great deal more land than that for which plaintiff on the hearing actually contended. From statements of counsel for plaintiff in error, and from the whole record, it appears that the substantial controversy is as follows: The plaintiff in error claims title to property under a patent of the United States granted to Louis Labeaume and his legal representatives, under a Spanish concession, as an heir of William Christy. She claims as riparian owner under a patent of the United States to Louis Labeaume, which patent will be found set forth in full in the printed transcript at page 14 *et seq.* A mere casual glance at the words of description of this patent will show that the tract or parcel of ground covered thereby is most carefully described by metes and bounds, courses, distances and monuments, and that the eastern bounding line is not the Mississippi River itself, but a line carefully laid out and surveyed on the surface of the earth; that is, through a sand beach, a portion of which imposed itself between this eastern boundary line and the Mississippi River.

The petition is in the usual form of a declaration in ejectment.

The answer of the City of St. Louis is, *first,* a general denial; *second,* a plea of title by adverse possession for a period of ten years next before the filing of plaintiff's

petition; *third,* a plea of acquiescence by the plaintiff in the claim and adverse use and occupancy by the defendant, City of St. Louis, of the property in controversy as a public wharf of said city for a period of more than ten years prior to the filing of plaintiff's petition, and that plaintiff was estopped by the said acquiescence in the use and occupancy of said property by the defendant City of St. Louis as a public wharf; and *fourth,* a plea to the effect that neither the plaintiff nor any of her predecessors in the title were seized or possessed of the premises in controversy within ten years before the commencement of the action.

In the trial court a jury was waived and the cause was submitted to the court on the evidence and declarations of law prayed by the respective parties. The court found in favor of plaintiff (plaintiff in error here). After taking the necessary steps for a new trial, the defendant City of St. Louis, appealed to the Supreme Court of the State of Missouri, where, on July 3, 1899, the Supreme Court reversed the judgment of the trial court and entered judgment in favor of defendant, the City of St. Louis, defendant in error here.

As shown by the opinion rendered by the Supreme Court of Missouri, the cause was determined upon certain points referred to in the following excerpt:

After setting out the facts and discussing the question or riparian rights, the court said:

"It is fundamental in the law of accretions that the lands to which they attach must be bounded by the river or stream to entitle its owner to such increase. * * *

"Now, in the patent to Labeaume the river is not mentioned as a boundary. On the contrary the eastern boundary is a permanent line fixed by courses and dis-

tances, metes and monuments 'between high and low water mark,' and the accompanying survey exhibits a tract of fourteen acres, or more, between the eastern boundary of the survey and the river itself. To the east of the pink line which borders the survey of 1852 lies a larger *'sand beach'* which separates the river from the Labeaume survey.

"We are unable to agree with counsel for plaintiff that the plat to the patent carries the north line of the survey by a dotted line across the said beach. On the contrary we think it is plain that this dotted line from the point 'F' marks the then northern limits of the city, and not of this survey. The plats and the language of the survey alike bring us to this conclusion. It follows that the effort to bring this case within the doctrine of *Shelton v. Maupin,* 16 Mo. 126, must fail because there is no evidence that the lines of this survey ever ran to the river.

"Whatever may have been the original Spanish concession, the survey and patent made under the confirmation in 1852 must control as to the extent of Labeaume's right. (Smith v. St. Louis, 21 Mo. 36.)

"A great number of cases decided by this court are cited by the plaintiff to sustain her claim that the call for the eastern boundary constitutes the grantees in the Lebeaume patent riparian owners. *(LeBeau v. Gaven,* 37 Mo. 556; *Perkins v. Adams,* 132 Mo. 131; *Tatum v. St. Louis,* 125 Mo. 647; *Crandall v. Allen,* 118 Mo. 403; *Naylor v. Cox,* 114 Mo. 232; and others.) A very cursory reading will demonstrate that in each of these cases the river itself was a boundary line and no other lands intervened between the river and the riparian claim."

After discussing several authorities, the Court continues as follows:

"The tract in this case was confirmed, not only by fixed boundaries *other than the river,* but the exact number of acres was specified within that survey, and that survey, as to its quantity, excludes all idea that the United States was granting the fourteen or more acres lying outside of that survey at the time it was made.

"The survey, moreover, says that Soulard's survey did not describe the meanders of the Mississippi river or of Rocky branch, and it was impossible to determine whether the difference in area was the result of miscalculation by Soulard or by the accretions; but whatever the cause of the discrepancy, the United States confirmed the last survey, *which nowhere calls for the river as a boundary.* And by that patent all these questions must be held to be forever settled.

"Our conclusion is that as Labeaume was not a riparian owner, his heirs or grantees can not recover the tract in suit as an accretion. The Court therefore erred in admitting the patent as any evidence of title to the land in suit, as it did not purport to convey it to Labeaume."

The Court then takes up the question of adverse possession and acquiescence and estoppel of plaintiff in error herein, and discusses this phase of the case as follows:

"Plaintiff then having no paper title to the land in suit is remitted to an actual, continuous, adverse possession of the tract as her basis for recovery. She has no color of title by which her possession of a part can extend to the whole.

"What evidence, then, is there in the record of such possession as would ripen into a title? By the form of her action she admits the possession of defendant, and the defendant in possession may rest upon that possession until plaintiff exhibits a better title. Plaintiff must recover upon the strength of her own title, and not upon the insufficiency of the defendant's.

"Plaintiff has shown no continuous, if any, possession of the property in suit. There is not a pretense that the same was ever inclosed by a fence or that plaintiff had any buildings or permanent structure of any kind or character on this particular land.

"There is no proof of actual ownership or claim thereof in the record.

"On the contrary, the proof appears quite conclusive that she recognized the city's right to a wharf. The plat which she introduced to show the mutual agreement between Mrs. Tyler, by Silas Bent on one side, and Sallie McPheeters, Mary B. Scott and Julia Crosby, by W. M. McPheeters, shows, among other things, that in 1873 the 90 feet herein sued for was designated on the plat as an extension of lots 33, 34 and 35, and the prolongation brought it to another tract, marked *"Wharf,"* and there it terminated. This tract was marked Mrs. Martha T. Sweringen.

"On the trial, plaintiff's counsel distinctly announced they would be bound by this map or plat. In a word, twenty-two years before the commencement of this action, it appears this land was a part of a public wharf, and none of the persons who had that property surveyed were making any claims to the land in dispute in this action. Another significant fact is this: Kennett, now Hall, street was opened by condemnation proceedings in 1870. This street is east of plaintiff's original lots.

The property east and west of Kennett street which is within the extended side lines of plaintiff's original lots was platted and treated as the property of the Tyler and Buchanan heirs, and Liebke and Schrage were made parties to the proceedings, as lessees of the Buchanan heirs. Damages were assessed in favor of the Tylers and Buchanans. Plaintiff, Mrs. Sweringen, was made a party to that suit, and benefits were assessed against her lots in Block 308 E, to pay the assessment to the Tylers and Buchanans, and they were sold to, and afterwards, in 1879, plaintiff bought her lots from the city.

"Notwithstanding all this property was platted as belonging to others, and that she was served with process, she permitted those proceedings to go without objection. Neither plaintiff nor her agents made the slightest claim of ownership of this tract at that time.

"The tax receipts disclose that since 1874 the plaintiff did not pay on the land sued for. She did return her property *west of the wharf line in Block 254*, but the receipts do not corroborate the oral testimony that she paid on the tract in suit, but most clearly disprove it. Her receipts show that the land on which she paid was bounded on the east by the wharf, and neither the plaintiff or her agents objected to such a description. So much for the negative aspect of her adverse possession."

The Court then discusses the evidence introduced by plaintiff in error herein as to the occasional expulsion of squatters from this property, and plaintiff's tax receipts and failure to pay taxes on the particular property in controversy, and concludes as follows:

"It follows that plaintiff introduced no evidence to show possession or seizin of the tract sued for within ten years before the commencement of her action, and

the Circuit Court erred in not so holding, as plaintiff had no paper title drawing to her the possession."

This opinion of the Supreme Court is found in Vol. 151, Missouri Reports, at Page 348 *et seq.*

It seems clear that the Supreme Court of Missouri decided this cause on three propositions. The first was one of interpretation of the words of description employed in the Labaume patent, and it was held that neither the plaintiff in error here, nor her predecessors in the title, became riparian proprietors under the language of that patent.

Second, the Court held that neither the plaintiff nor her predecessors in the title had been in possession of the property in controversy for ten years or more prior to the bringing of her action; and third, that the City of St. Louis had occupied said property, claiming the title thereto adversely to plaintiff and all others for a period long exceeding ten years next prior to the filing of plaintiff's action, and had occupied the same as a public wharf, and that by the various acts and matters appearing in the record the plaintiff and her predecessors in title had acquiesced in the claim, possession, use and occupation of the property by the City of St. Louis.

STATEMENT OF EVIDENCE.

On either of these propositions the judgment of the Supreme Court of Missouri may well stand. And while perhaps it may be unnecessary for the purposes of this writ of error to go into a more extended statement of the facts than the foregoing, nevertheless, for the con-

venience of the court we submit the following more complete recital thereof:

It is contended by the defendant in error at the outset of the case that the plaintiff's ancestors and grantors were not riparian owners, because the description of the property conveyed by the Labaume patent did not extend the limits of the property to the Mississippi River, but to a line which, beginning at a stake between *high and low water mark,* continued with the meanders of the river *"between high and low water mark"* from the mouth of Rocky branch to the point of beginning; said line being shown by the description as well as by the pink line in the plat attached to the patent, and defining the boundaries of the survey, to be at all points from the furthest limit north to the furthest limit south, several hundred feet west of the waters of the Mississippi. The property of the Labaume patent, issued in 1852, ended at its northeast corner at what had been the mouth of Rocky branch, and the northeast corner of the survey, and the northeast corner of the City of St. Louis. The patent to Rufus Easton, introduced by the defendant in error, had its southern boundary along the meanders of the Rocky branch terminating on the river bank at the mouth of Rocky branch, in 1826, and the description of the Easton survey extended at that time along with the bank of the Mississippi River.

Against the objection and exception of the defendant in error that there was no riparian ownership under the Labaume patent, and that none of the evidence offered by plaintiff in error was competent as having any relation to the property here in controversy, the plaintiff in error was permitted to introduce evidence in the form of deeds, plats and partition proceedings, tending to show that originally, and prior to 1830, the property in

the Labeaume patent, immediately south of Rocky branch, was known as out-lot No. 9; that by the partition proceedings of the property of William Christy's estate, out-lot No. 9 was subdivided into lots, in 1843, of which three lots were conveyed to trustees for the plaintiff, Martha J. Sweringen, those lots being each 30 feet front, making 90 feet in all, by about 138 feet in depth, and that by the death of trustees the title vested in her. This property is located in what has for many years been City Block 308 E, and is now bounded east by First, or Main street. Since 1843, nearly 1,500 feet of land have been added to what was then the bank of the river at City Block 308 E, and about the west line of First street, so that the present line of the river at the east line of the wharf is nearly 1,500 feet eastwardly from the old mouth of Rocky branch, and includes City Blocks 660 W, 660, 660 E, and 2544. Plaintiff in error, by projecting the north and south side lines of her 90-foot strip to what is now the river, claimed all of the property from what was her original western line, in the middle of City Block 308 E, straight through to the present river bank, including all of the wharf within the 90-foot strip, from the western wharf line to the eastern wharf line, or present bank of the river.

By an examination of plat No. 2, which Surveyor Joyce identified as part of his field notes, used in making surveys for the plaintiff in error, among others, it will appear that the mouth of Rocky branch was formerly about 270 feet north of Dock street, at a point a few feet west of First street. With the progress of time, as appears from the same plat, Rocky branch, as it progressed through the land that was formed, extended in a generally easterly direction, until it was south of Dock street, in 1866, by at least 150 feet, at a point

south of City Blocks 660 and 660 E. The line of the Mississippi River in 1866, as it appears on said plat, extended from the then mouth of Rocky branch in a northeasterly direction, until it crossed what is now City Block 2544.

The plaintiff in error has absolutely no form of paper title, and nothing of record by deed, plat or any other form of instrument, tending to show that she claimed title to any property east of City Block 308 E at any time. On the other hand, it appears in evidence for the defendant in error that as early as 1852, and in the same year that the Labeaume patent was issued, under which plaintiff in error claims, George Buchanan, claiming under the Easton patent, north of Rocky branch, made a dedication of streets to public use by a plat duly recorded, Plat Book 3, page 39, in which dedication Second street and First street, as far south as Rocky branch and 206.6 feet south of Buchanan street, appear as dedicated streets.

In the language of his dedication, George Buchanan claims as his property what is colored in red on the plat, and the part colored in red extends as far south as Rocky branch and the north boundary of St. Louis, and it contains the statement that from First street to the Mississippi River is 940 feet.

(It is to be noted that the property in the name of James T. Sweringen, on Buchanan street, between Second street and Broadway, is not the original part of the property in controversy in this suit, which is between First and Second streets, and is more than 320 feet south of Buchanan street.)

It also appears from the evidence of the defendant in error that the heirs of George Buchanan made a voluntary partition, in 1866, from the plat of which partition

and the description of the property in the deeds conforming to said plat, streets and alleys are laid out and dedicated, and lots conforming to such streets and alleys, which lots extend as far south as Rocky branch at its entrance into the Mississippi River, in 1866, at the time the plat was made.

Referring again to Plat No. 2, of Joyce, it will be seen that the plat of the Buchanan partition conforms exactly to the outlines of the Rocky branch and the Mississippi River, as they appear on said Plat No. 2, and a descriptive reference will be found on Plat No. 2, of Joyce, showing that the lines on said plat are taken from the lines on the plat of the Buchanan partition in Deed Book 308, page 524.

On said Plat No. 2, of Joyce, City Block 2544 appears in full as being bounded on the east by the western line of the wharf, and south by Dock street. It also appears from said Plat No. 2 that the stone at the corner of Dock street and the wharf was set there by Moulton, engineer for the city.

Referring to the same Plat No. 2, it appears that the 90-foot strip, between the projected side lines of the Sweringen lots in City Block 308 E, runs across Rocky branch at a point in City Block 660, and across property set out in the Buchanan partition under the names Sallie McPheeters, George Buchanan, M. B. Scott. It is also to be observed that if lines had been projected from the Buchanan or Easton property at or prior to 1843, along the northern limit of the city, as it then extended eastwardly from the mouth of Rocky branch, such projected side lines would entirely cover the claim of Mrs. Sweringen, east of Kennett street, extending to the river. That is to say, whether the claim for accretions had been made to conform to the lines of Rocky

branch, which was the method adopted by the Buchanan heirs, or had followed the line dividing the city from the county, viz., the easterly line defining the city's northern limit from the point which was the northeastern terminal point for both surveys, the effect upon the accretion is the same, viz., it cuts off the extension of the Sweringen strip of 90 feet at about the same point in City Block 660.

Notwithstanding the claim by George Buchanan to all the accretion as far south as Rocky branch and the city limits, made in 1852, in the most public manner possible, by a plat of dedication; notwithstanding the public partition and platting by the Buchanan heirs in 1866 of the same property, with its extensions eastward and southeastward; all of which appears in plaintiff's evidence (see Plat No. 2 of Joyce); and notwithstanding the possession by Liebke (as appears in defendant's testimony) from 1857 to 1866 under a recorded lease from the Buchanan Estate, "to the southern boundary of said George Buchanan's Estate, including the entire landing or river front;" the plaintiff in error did not offer a scintilla of evidence to show any public claim by her, by deed, plat, or other record, or by suit against any Buchanan, or any tenant of a Buchanan.

In order to show possession of the property in controversy, Mr. J. V. S. Barrett, grandson of plaintiff, took the stand. Plat No. 1 was shown to witness. This is the plat which Mr. Joyce testified was prepared by him from Plat No. 2, and on which the side lines were extended from the western wharf line to the river, at the request of plaintiff's counsel, just before the trial. Witness was shown this plat, and, having had pointed out to him the property east of the wharf line, he said he went, in 1868 or '69, when about eight years old, with

his Grandfather Sweringen and Capt. Bent, *"to this very identical property,"* to have it surveyed. *No survey was produced by plaintiff,* but as all the testimony, including the later statements of Mr. Barrett, shows that "this very identical property" was in the river at that time, this statement must be considered erroneous.

Witness testified to the death of plaintiff's husband in 1872; that plaintiff had a house on Lot 308 E, fronting Second street. On cross-examination, Mr. Barrett testified that he never heard of a claim by Liebke to possession of part of the land under a lease made by the Buchanans, and never heard of any deed by which plaintiff's title to any of the property within the green lines on Plat No. 2 was affected, nor of any disturbance of her title or possession. Notwithstanding Mr. Barrett's ignorance, thus shown, of the Buchanan plats and the Liebke lease, and possession with logs, and notwithstanding his ignorance of the proceedings for the opening of Kennett street, the Marshal's sale to the city of plaintiff's lots in Block 308 E, to pay damages to other persons for the taking of property east of Block 308 E, and the plaintiff's redemption of the same property (as shown by defendant's evidence), the witness claimed to have knowledge enough to say that his grandmother, the plaintiff in error, paid taxes on the property down to the Mississippi River. As the plaintiff offered in evidence no tax receipts after 1869, and as the tax receipts from 1875 to 1895 (which the plaintiff in error declined to offer in evidence, or to produce for inspection, until compelled thereto by order of Court) disclose the fact that no taxes were ever paid by plaintiff in error on any property east of City Block 2544, *i. e.,* on the ground in controversy, Mr. Barrett's statement that taxes were paid to the river must be referred to the memory of his

boyhood, and must be taken in a strictly Pickwickian sense.

Chas. T. Farrar testified that he had charge of the property of plaintiff in error, from Second street to the river, since October, 1875, and paid the taxes. On several occasions he put squatters off, that is, people who put shanties or shanty boats on the property. On cross-examination, witness testified that he never heard of any claim to any part of the land from Block 308 E to the river till the railroad built its tracks. Witness transacted all plaintiff's business. His uncle and he always paid taxes and attended to street opening matters. Witness did not recollect the opening of Kennett street, but thought plaintiff in error had something to do with it. He remembered that she had a lot of property sold out before he took charge of it, and he bought from Huntington Smith a lot of bills to redeem property. He had no memory about those bills now without examining his books. Questioned specifically as to whether he had ever removed any squatters from the land east of Block 2544, witness said he had removed approximately a half a dozen; that he had removed them since he knew that the railroad company and Mr. Joy were in possession; that he did not recall any other squatters he had removed from that part. Witness testified, as a real estate expert, to value of 75c. per square foot monthly rental, $116.92.

John G. Joyce testified that he had surveyed the ground marked on Plat 2 at the request of attorneys for plaintiff in error, and according to the instructions of the attorneys at the time, and the property pointed out by them for such survey was bounded east by the wharf,

as indicated on the Plat No. 2. He said the green lines on Plat No. 1 had been extended down to the river, at the request of counsel for plaintiff in error, three or four days before the trial. He further testified in detail to the condition of the river in 1866, and subsequently to the building of the dykes, to their effect in filling up the land inside of them, and to the various details of measurements and surveys set out on Plat No. 2.

John H. Terry testified, as a real estate expert on values, that the property in controversy was worth 80c. per square foot, making a total for 346 feet by 90 feet of $24,922.00, an annual rental of $1,495.32, a monthly rental of $124.60.

On cross-examination, witness testified that he had known of no sales on the river front since the railroad stopped buying five years ago.

Against the objection of defendant in error, the plaintiff in error was permitted to introduce the tax bills from 1851 to 1870, inclusive. From these it appeared that plaintiff in error paid taxes to the State and city separately up to 1867, and together from 1867 to 1870. Nearly all these tax bills described the street on which the property fronts as First street, Front street, or Main street. The eastern boundary is stated to be the "river" on eight different bills, ending in 1858. It is given as "Front street" once; as "First street" six times; as "E & N limits" twice; "Self" five times; "Second street" once; and a blank appears for the eastern boundary seven times. The measurement is given as "90 ft. front" uniformly. The depth is usually stated at 138 feet, but varies from 75 feet to 224+ feet.

But it is a significant fact that the original measurement in depth of the lots as laid out in the Sheriff's sale in the Christy partition, under which plaintiff in error

claims, is 138 ft. to the western end of the lots; and that the other lots extending back to Second street, laid out under the same Sheriff's sale, were 140 feet deep, making a total from Second street to the river of 278 feet. (See Plat C.) Referring to Joyce's Plat 2, it appears that this total of 278 feet is the measurement from Second street to the line of the Mississippi River at the time of the Sheriff's sale. Said Plat 2 of Joyce also shows that the depth of the Sweringen strip of 90 feet from the western line of said strip to First street, now Main street, is 224 feet 4 inches, the greatest depth contained in any tax bill offered in evidence by plaintiff in error. *That is to say, the evidence for plaintiff in error discloses that the plaintiff in error never paid taxes, up to 1870, on a foot of ground east of Main street.*

At the close of plaintiff's evidence, defendant offered an instruction for a non-suit, which was refused.

DEFENDANT'S EVIDENCE.

Defendant in error showed first the title under the Easton patent, north of Rocky branch, which became the Buchanan title already referred to, and the plat of "George Buchanan's Division. Bremen." Under the Buchanan title, Capt. Liebke had possession for nine years and five months under a recorded lease from the executor of George Buchanan of "all the land east of Second street and extending from Second street to the river, and from Angelrodt street on the north to the southern boundary of said George Buchanan's estate, including the entire landing or river front of said George Buchanan's land, excepting the streets and alleys which are or may hereafter be laid out through said

premises, all of said land being in what is known as George Buchanan's Addition to the town of Bremen."

And after the expiration of the lease and the Buchanan partition, Capt. Liebke had possession of substantially the same property under separate leases from the individual heirs.

Capt. James M. Montgomery, an old steamboat pilot, testified that Rocky branch was the center of an old bend in the river, the landing of steamboats and rafts.

He also testified to the building of the dykes and to the resulting formation of land within them.

Capt. John H. McBride, another steamboat pilot, testified substantially to the same effect as Capt. Montgomery.

Capt. Herman Rechtien testified that the longitudinal dyke was started in 1864, by the city, under a contract with Sheehan, and the witness had charge of the towing in of barges.

Julius Moulton, engineer in the Harbor and Wharf Department, testified to his survey in 1883-84 of the west line of the wharf as established by Ordinance 5403, and placing corner stones and monuments to mark it, notably the stone at the northwest corner of Dock street and the wharf, being the southeast corner of City Block 2544, identified by Joyce and described at length on his Plat No. 2, and also the stone at the intersection of the western wharf line and Buchanan street to which Capt. Liebke testified, viz., "a square stone marked 'city,' eight inches square and put there by the city establishing the west corner of the wharf and Buchanan street."

Mr. Moulton also described the property leased to Justin E. Joy, in 1891, as part of the *"unimproved wharf,"* at a rental of $600 per annum for five years, $1,200 per annum for the second five years, and $1,800

per annum for the third five years. The property contained 152,000 square feet, and covered the property in controversy, which, according to the testimony of Judge Terry, contained 31,140 square feet.

Defendant offered in evidence Ordinance 5403, approved August 6, 1864, entitled, "An Ordinance to establish and open the wharf from Biddle street to the northern boundary of the city, and from Hazle street to the southern boundary of the city."

This ordinance defined the line passing the property in question as the western line of the wharf, identified by Joyce and Moulton, and shown on the various plats in evidence.

Defendant in error also introduced the proceedings for opening Kennett street in 1870. In the petition, as it was served and published, the plaintiff in error is named four times as a defendant. Damages to the amount of $2,000 are assessed in favor of plaintiff in error and two others, for the taking of property on Warren street, several blocks south, and benefits amounting to $560 are assessed against plaintiff in error and the same co-tenants, for the same property. (Assessment No. 133.)

The plat required by law to be filed with the proceedings shows the 90-foot strip in Block 308 E, west of First street to be in the name of plaintiff in error, Martha J. Sweringen (coinciding with her tax bills previous to 1870); but shows the property east of First street to be all assessed in the names of others than the plaintiff, viz., Mary L. Tyler, Julia Crosby, Sallie B. McPheeters, Ben. W. Lewis and Mary B. Scott.

The verdict of the jury confirms the finding of damages for the opening through the property east of the 90-foot Sweringen strip in favor of Mary L. Tyler, to the

amount of $1,500, and assesses benefits against the lot of plaintiff in error in Block 308 E, to the amount of $27 for benefits, and 27 cents for costs.

The judgment of the Land Commissioner is in accordance with the verdict of the jury.

The plaintiff's property was sold by the City Marshal, at public auction, and the city itself became the purchaser for $45.24. This was October 16, 1871.

On March 24, 1879, the plaintiff redeemed the property by paying $70.85, the amount of the claim and costs, and received a deed from the city reciting all of the facts.

The lease from the city to Justin E. Joy was read in evidence, showing the terms of Joy's tenancy since 1891.

Ernest Boedicker, from the Assessor's office, identified the plat books of City Block 2544, and testified that the block came into existence in 1874, and that no property east of that block had ever been assessed for taxes.

The plat books showed the same thing; as did also the tax receipts of plaintiff, from 1875 to 1895, offered by defendant for that purpose.

In rebuttal, Dr. W. M. McPheeters being called to identify the agreement of 1873, between Mrs. Tyler and part of the Buchanans, testified that he did not represent all of the Buchanan heirs, and the Court having admitted the agreement in the case of plaintiff in error, now ruled it out. Mr. Farrar identified the tax bills from 1875 to 1895, and testified to the presence of a house in Block 308 E.

The defendant in error at this point asked for a peremptory instruction that the plaintiff in error could not recover, which was refused.

The plaintiff in error asked a number of instructions which were given, and which will be found in the printed transcript.

In addition to the above, it appears from exhibits forming a part of the brief and argument of defendant in error, in support of its motion to dismiss or affirm (page 26, *et seq.*), that the plaintiff in error, BEFORE SHE SUED OUT THE WRIT OF ERROR TO THIS COURT, sold and conveyed all her interest in the property in controversy, and that her grantees immediately brought a new action in ejectment against the City of St. Louis and Justin E. Joy, a lessee of a portion of the property from the City of St. Louis, in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, claiming the same property now here in controversy, and that the City of St. Louis set up therein the same defense that it had theretofore set up in this action, and in addition thereto, a plea was filed to the jurisdiction of the United States Circuit Court.

It further appears that said action was tried before His Honor, Judge Elmer B. Adams, a jury having been waived, and that while the United States Circuit Court held that under the Lebeaume patent plaintiff and her ancestors were riparian owners, that nevertheless the City of St. Louis had occupied said property for public uses, in which the plaintiffs in that case, or those under whom they claimed, had acquiesced, and that they were therefore estopped from claiming the property, and judgment on the merits of the controversy was entered in favor of the defendant, the City of St. Louis.

It thus appears that two courts before whom the rights of the City of St. Louis, defendant in error herein, were investigated, decided in favor of the City of St.

Louis, and neither of them based its decision upon any Federal question, but upon the general rules of law respecting titles to real estate.

On the merits of this cause, if this Court should undertake, upon the record as presented, to go into the merits, the following brief and argument are submitted:

BRIEF.

I.

The Labeaume patent, under which plaintiff in error claims title, does not make the Mississippi River the boundary of the grant; therefore, the property therein embraced was not riparian, and its owner was not entitled to the accretions made by the river.

Niles v. Cedar Point Club, 175 U. S. 300.
Sweringen v. St. Louis, 151 Mo. 348.
Hafner v. St. Louis, 161 Mo. 34.
Smith v. Public Schools, 21 Mo. 36.
Cook v. McClure, 58 N. Y. 437.
Dunlap v. Stetson, 4 Mason 349.
Child v. Starr, 4 Hill (N. Y.), 369.
Bradford v. Cressey, 45 Me. 9.
Daniels v. Cheshire R. R. Co., 20 N. H. 85.
Healey v. McCormick, 3 Kernan 296.

II.

Plaintiff in error's theory is that she is entitled to such accretions as lie between the side lines of her original lots prolonged or extended to the river.

Even if those lots had been in fact bounded by the river, such is not the rule of law.

Crandall *v.* Allen, 118 Mo. 403, and Ca. Ci.
Deerfield *v.* Armes, 17 Pick. 41.
Kehr *v.* Snyder, 114 Ills. 313.

III.

But even a prolongation of the side lines of land of plaintiff in error would not avail her; such prolongation of the lines would be intercepted and cut off by a prolongation of the side lines of the Buchanan land, covered by the Easton patent, which lay north and east of her's, and nearer the river.

On the views of the law taken by plaintiff in error, therefore, relating to accretions, the newly formed land became attached to and a part of the Buchanan property.

IV.

Even on the assumption that plaintiff in error was a riparian owner, and that she was entitled to accretions between extended side lines, she has shown no continuous seisin or possession of any property east of her original lots, so as to connect the same by continuous accretions with the property in controversy, and establish a basis for recovery.

V.

Plaintiff in error is barred by the Statute of Limitations.

a. **There was no evidence that she, or any person, under whom she claims, was ever in possession of any part of the premises in controversy; certainly not at any time within ten years preceding the institution of this suit.**

b. **On the other hand, there was evidence that Buchanan's lessees and assigns have been in possession since 1857.**

c. **As early as 1866 the Buchanan heirs laid out and platted a subdivision of their property, assigning lots to different heirs, and laying out certain streets, which lots and streets extended south to Dock street, and across and east of the side lines of the original lots of plaintiff in error, if prolonged to the river.**

VI.

Upon the trial, plaintiff in error, by her counsel, *agreed to be bound* by the plat offered by her, in connection with the testimony of the witness Robert E. Collins.

This plat bounds the land of plaintiff in error on the east by the WHARF.

Wash v. Mo. Pac. Rwy. Co., 102 Mo. 582 (588).
Renshaw v. Ins. Co., 103 Mo. 595 (603).
Finkelnburg's App. Prac. 106.

VII.

The city having expended large sums of money for building dykes and revetments in order to construct a great public wharf under Ordinance 5403, providing a complete wharf system for the entire river front of the city; having granted a license to the railroad company to use a part of the unimproved wharf thus formed; having leased a part to defendant Joy; and the railroad company having also expended large amounts for the connection of its great railway system; and plaintiff in error, having stood by for years in silence, and having permitted these public improvements to be made, is estopped from maintaining ejectment against either the city or the railway company.

Dodd v. Railroad Co., 108 Mo. 581.
Provolt v. Railroad Co., 57 Mo. 256.
Masterson v. Railroad Co., 72 Mo. 633.
Kanaga v. Railroad Co., 81 Mo. 126.
McClellan v. Railroad Co., 103 Mo. 295.
Railroad Co. v. Town Site Co., 103 Mo. 466.
Avery v. Railroad Co., 113 Mo. 561.
Webster v. Railroad Co., 116 Mo. 117.
Scarrett v. Railroad Co., 127 Mo. 298.
City of St. Joseph v. Landis, 54 M. A. 326.
Planet Property & Fin. Co. v. Railway, 115 Mo. 613.
House v. Montgomery, 19 M. A. 170.
Gibson v. St. L. A. & M. Ass'n, 33 M. A. 165.
School Dist. v. Lindsay, 47 M. A. 134.

VIII.

Several streets intervened between the lots of plaintiff in error and the river, thereby effectually preventing accretions from attaching themselves to these lots.

Smith v. Public Schools, 21 Mo. 36.
Smith v. Public Schools, 30 Mo. 290.
St. Louis v. Lemp, 93 Mo. 437.
Ellenger v. Railroad, 112 Mo. 526.
Tatum v. St. Louis, 125 Mo. 657.
St. Louis v. Mo. Pac. Ry. Co., 114 Mo. 13.

IX.

The defendant in error having created the land in controversy for the express purposes of a wharf, and having held open, notorious, continuous, adverse and peaceable possession for more then ten years next before the bringing of this action, title is in defendant in error, the City of St. Louis.

Mather v. Walsh, 107 Mo. 121.
White v. Keller, 114 Mo. 479.
Wilkerson v. Eilers, 114 Mo. 245.
Sherwood v. Baker, 105 Mo. 472.
Long v. K. C. Stock Yards Co., 107 Mo. 304.
Allen v. Mansfield, 82 Mo. 693.

X.

Even if the title to the property in question were not in the defendant in error, the City of St. Louis, and had

originally been in the plaintiff in error, the defendant in error has acquired an easement in the property used as a wharf by the public for more than ten years, with the acquiescence of the plaintiff in error, and she is estopped from claiming title or possession in this action.

Adverse use of land by the public for ten years will bar a recovery.

Price v. Town of Breckenridge, 92 Mo. 378 (1887).
State v. Walters, 69 Mo. 463.
State v. Young, 27 Mo. 260.

XI

Plaintiff's conduct, as disclosed by the record, estops her from denying a dedication of the land in controversy for wharf purposes. The city having undertaken to improve it as such; having demised part of it as an unimproved portion of the wharf, under its charter power; having granted the St. Louis, Keokuk & Northwestern Railway Co. a right of way over it; and the evidence showing also that steamboats landed there, an acceptance was established, and the dedication became complete.

Elliott's Roads and Streets, p. 91.
McKee v. St. Louis, 17 Mo. 184.
Rector v. Hart, 8 Mo. 488.
Stacey v. Miller, 14 Mo. 478.
Gamble v. St. Louis, 12 Mo. 617.

ARGUMENT.

I.

THE LABEAUME PATENT, UNDER WHICH PLAINTIFF IN ERROR CLAIMS TITLE, DOES NOT MAKE THE MISSISSIPPI RIVER THE BOUNDARY OF THE GRANT; THEREFORE THE PROPERTY THEREIN EMBRACED WAS NOT RIPARIAN, AND THE OWNER WAS NOT ENTITLED TO THE ACCRETIONS MADE BY THE RIVER.

The rule is universal that land must be bounded by the river or stream in order to entitle it to accretions. If the boundary be not the river, and the space between the boundary and the river be ever so small, the accretions made belong to that space and the owner thereof. In the patent in question, the river is nowhere made the boundary. The boundary is a line by *metes and monuments and courses and distances "between high and low water-mark,"* and the survey incorporated in the patent shows that a large amount of land had been formed in front of that line. The lines of the grant were *not* carried to the new shore, and thence down the same with its meanders, *but they stop between the old shore and the new.* If the boundary excludes the river, the grant does not carry the accretions.

The Supreme Court of Missouri, in the case at bar, after considering the Lebeaume patent, under which

plaintiff in error claims, held that that patent did not convey to the river, saying at page 358:

"The tract in this case was confirmed not only by fixed boundaries, other than the river, but the exact number of acres was specified within that survey, and that survey, as to its quantity, excludes all idea that the United States was granting the fourteen or more acres lying outside that survey at the time it was made."

Sweringen v. St. Louis, 151 Mo. 348.

The Labeaume patent was again before the Supreme Court of Missouri for construction, and the Sweringen case, in 151 Mo., was followed and approved, and the Court again held that the property conveyed by that patent was not riparian property, but that the eastern boundary was a line west of the river.

Hafner v. St. Louis, 161 Mo. 34.

The case of Niles v. Cedar Point Club, 175 U. S. 300, is conclusive against the claim of plaintiff in error that the property conveyed by the Labeaume patent conveyed to the river.

Where one corner was a stone, etc., on the west bank, *"thence running on the western bank of said river to high-water mark to first bound,"* it was held that the river was not the boundary.

Dunlap v. Stetson, 4 Mason 349.

So a line running to G river, thence *"along the shore of said river to, etc.,"* it was held that the river was not the boundary.

Child v. Starr, 4 Hill (N. Y.) 369.

So a line running on the *"west bank of said creek,"* it was held that the creek was not the boundary.

Bradford v. Cressey, 45 Me. 9.

The doctrine as to the *"bank"* or *"shore"* excluding the stream is fully sustained in

Daniels v. Cheshire R. R. Co., 20 N. H. 85.
Healey v. McCormick, 3 Kernan 296.

Where the boundary line of land bordering on a pond was expressed in the deed "to commence at a stake near the high-water mark of the pond, and to run thence along the high-water mark of said pond to the upper end of the pond," it was held that the boundary line was fixed and permanent, and that the grantee was not entitled to any accretions or land left dry by the pond receding.

Cook v. McClure, 58 N. Y. 437.

The confirmee of a Spanish grant is confined to the boundaries established by the survey, although the original concession was bounded by the river.

Smith v. Public Schools, 21 Mo. 36.

Now, bearing in mind the foregoing rules of law, let us apply them to the facts of this case.

The description of the patent opens as follows:

"Begin at a stake set on the right bank of the Mississippi River, *between high and low water-mark,* and on

the extension line produced eastwardly from Labeaume's southern ditch, the lower and most eastern corner of the survey, and the upper and most northern corner of the survey of Joseph Brazeau, No. 3332." The description then continues at great length, and in minute details according to surveyor's measurements, describing the large tract of 374 arpents, until, in the course of the description, it comes back to "a point at the mouth of the Rocky branch, the northeastern corner of this survey, and a corner to the City of St. Louis, it being the northern termination of the northwestern boundary line thereof." This corner being a point at the mouth of Rocky branch, is described in the patent as being marked F on the plat of Milburn, Surveyor, attached to the patent. The patent then continues the description as follows: "From the corner F down the right bank of the Mississippi River *with the meanders thereof between high and low-water mark:* south nine degrees east; at eight chains sixty-six links a stake. Thence south twenty degrees east; at five chains fifty links, a point from which offset north seventy degrees east, one chain eighty-three links *to the center of the water of the Rocky branch as running through the sand beach*—six chains sixty-three links to the bluff of the sand beach—seven chains forty-seven links to the water's edge of the Mississippi River;—*return to the meandering line*—at ten chains a post from which the southeast corner of a stable bears south forty-two degrees west, distant forty-six links to the upper point of the entrance of the water of the Rocky branch into the Mississippi River, bears south sixty-two degrees thirty minutes east distant sixteen chains. Thence south thirty-four degrees east; at seven chains five links, the eastern extension of Labaume's northern ditch, from which the corner marked

D on the plat bears north seventy-four degrees thirty minutes east, distant nineteen chains seventy-five links; at twenty-five chains a stake. Thence south twenty-three degrees east; at thirteen chains sixty-seven links, the northeast corner of Robertson & Patterson's sawmill; at fourteen chains eight links, the southeast corner of said mill; at twenty chains fifty-seven links, the southeast corner of Hendrick's flour mill, nineteen links to the right; at twenty-three chains thirty-five links, the northeast corner of Cohrane's sawmill. Thirty chains ninety-five links to *the beginning corner.*"

It is respectfully submitted to the Court that the description of the survey as contained in the petition, and especially that part quoted above, establishes the line of property conveyed by the patent clearly and unequivocally on a line between high and low water-mark, which is indicated upon the plat by the clear black line extending from the letter F southwardly to A, and which is to the left of the irregular light lines marked sand beach, and between the sand beach and the little dotted marks indicating the high bank. In short, the property included in the patent, as shown by the plat, which is a part of the original patent, is within the limits of that which is marked in pink ink, and includes no part of the sand beach at all, but shows that the property conveyed by the patent in 1851 and 1852 was nearly a thousand feet from the then water's edge of the Mississippi River. The granting clause of the patent is as follows: "Now know ye, that there is, therefore, granted by the United States unto the said Louis Labeaume, or to his legal representatives, or to his or their heirs, the tract of land, as described in the aforesaid survey No. 3333, saving and reserving any valid adverse rights, which may exist

to any part thereof." The straight dotted line which runs from the point F on the plat out into the river is the east and west line marking the northern limits of the city at that time, as can be seen by reference to any of the other plats, and is not the northern line of the survey, as was contended for below by plaintiff's counsel; the fact being that the property here in controversy is north of the old city limits existing at the time of the survey. That this is not part of the property surveyed is shown by the fact that it is a dotted line, and is not in any way within the black boundary lines and the pink coloring which clearly denote what are intended as the boundaries of the survey. If there were any doubt about this, it would be entirely cleared up by the language of the survey where it refers to the corner marked F as "a corner to the City of St. Louis, it being the northern termination of the northwestern boundary line thereof." A reference to the plat shows that the long dotted line extending across the entire survey diagonally, and ending at point F, is marked "northwestern boundary line of the City of St. Louis." As stated before, a reference to any plat in evidence showing these boundary lines will show that the line from F extending into the river is the east and west line marking the northern limits of the city as the accretions formed to the east of the point F.

The eastern boundary line of the survey as shown on the plat, as the Court will see by reference to the plat and also by the description in the survey, was many hundred feet from the water's edge of the Mississippi River at the time the survey was made in 1851 and 1852. The distance is a varying quantity, but in one place it is shown to be nearly 1,000 feet. This is where the surveyor says "return to the meandering line," at which

point he fixes a post, from which the upper point of the entrance of the water of the Rocky branch into the Mississippi River (*i. e.*, where the Rocky branch entered the Mississippi in 1851 and 1852, after running across the sand beach in a southeasterly direction) bears south sixty-two degrees thirty minutes east, distant sixteen chains. That is, the distance in a diagonal line from the post mentioned to the then entrance of the mouth of Rocky branch was 1,056 feet, and the distance in a direct line, therefore, must have been nearly 1,000 feet.

A careful inspection of the plat and a careful reading of the survey in the very patent upon which plaintiff's whole title depends discloses, therefore, that the patent itself conveyed to the original patentee, under whom alone plaintiff claims, property which did not come within one thousand feet of the edge of the Mississippi River. In short, neither plaintiff nor her grantors were ever riparian owners. So, it is reiterated that upon that ground alone plaintiff in error has failed to show a cause of action in not showing title to accretions as riparian owners, upon which accretions necessarily and solely a claim is based for the property in controversy in this suit.

II.

IN THE DIVISION OF ACCRETIONS NO REGARD IS PAID TO THE DIRECTION OF THE SIDE LINES BETWEEN CONTIGUOUS PROPRIETORS.

The evidence shows that the land sued for is accretion, made by the filling up of a considerable bend in the river.

The land claimed lies between the prolongation of the side lines of the land claimed by plaintiff in error on the original shore.

This is *not* the rule for the division of accretions between the several owners on the old shore. That rule is that each person on the old shore is entitled to a proportionate frontage on the new shore, measured by the frontage of the old and new shores, and that no attention is to be paid to the original side lines between the several proprietors.

Gould on Waters, Sec. 162.
Crandall v. Allen, 118 Mo., 403 and cases cited.
Deerfield v. Armes, 17 Pick. 41.
Kehr v. Snyder, 114 Ill. 313.

In the case of *Crandall* v. *Allen, Supra,* this Court quoted with approval the language of the Supreme Court of Illinois, used in *Kehr v. Snyder,* 114 Ill., 313, as follows: "One common principle which pervades all mode of division (of accretion or alluvion) is that no regard is to be paid to the direction of the side lines between contiguous proprietors."

III.

PLAINTIFF IN ERROR IS NOT ENTITLED TO THE LAND IN CONTROVERSY, EVEN ON HER OWN ERRONEOUS THEORY OF A PROLONGATION OF THE SIDE LINES, BECAUSE SUCH LINES WOULD BE INTERCEPTED AND CUT OFF BEFORE REACHING SAID LAND, BY A PROLONGATION OF THE SIDE LINES OF THE EASTON OR BUCHANAN PROPERTY.

As the Labeaume patent touched Rocky branch on the south, so the Easton patent touched Rocky branch on

the north. Both followed the meanders of the branch, and were bounded by a point in the mouth of Rocky branch. The Easton patent was issued on the first of May, 1826. A copy thereof was introduced in evidence in this case. This patent contains a description from which it appears that the line of the property conveyed extended "to the Rocky branch, thence meandering down the branch east six chains, north thirteen chains, north fifty-three degrees forty-five minutes, east eight chains and fifty links, to a post at the mouth of the branch, thence up the Mississippi River." As already shown in the argument upon the former point, and by reference to the plat attached to the Labeaume patent, Rocky branch, from the original mouth at the time this post was established and the point fixed, extended in a southeasterly direction down and across the sand beach formed by accretions to the land, so that, even if the grantor of plaintiff in error had been a riparian owner (which he was not), the accretions which formed north of Rocky branch, *and therefore in front of the Easton property, afterwards known as the Buchanan tract,* extended with the meanders of Rocky branch in a southeasterly direction in such a way *as to intercept and cut off any extension between the side lines of the property of plaintiff in error.* The title to the accretions then must have accrued, so far as the position of the land and its relation to Rocky branch was concerned, to the Buchanan heirs, and not to that of plaintiff in error or her grantors.

IV.

EVEN ASSUMING THAT PLAINTIFF IN ERROR HAD A RIPARIAN OWNERSHIP IN THE ORIGINAL LOTS IN BLOCK 308 E. (WHICH SHE HAD NOT), AND ASSUMING THAT SHE HAD THE RIGHT TO ACCRETIONS BETWEEN THE EXTENDED SIDE LINES OF HER PROPERTY (WHICH SHE HAD NOT), SHE HAS SHOWN NO CONTINUOUS SEISIN OR POSSESSION OF ANY PROPERTY EAST OF SAID ORIGINAL LOTS, SO AS TO CONNECT THE ORIGINAL LOTS BY CONTINUOUS ACCRETION WITH THE PROPERTY IN CONTROVERSY AND ESTABLISH A BASIS FOR RECOVERY IN THIS ACTION.

The property in controversy being accretion, plaintiff in error must show continuous seisin and possession of every foot of the land as it was formed.

This is, in some respects, a peculiar case. Plaintiff in error is trying to take away from the defendant in error, by the process of a writ of ejectment, property which is some 1500 feet from any property to which plaintiff in error has any claim of paper title. In view of this fact, the Court will scrutinize with unusual care all testimony offered by plaintiff in error as a basis for her recovery, in order to ascertain whether there is *any* evidence to support her claim. It may be fairly said that few, if any, of the cases cited by plaintiff in error have any application whatever to the case at bar. Nearly all the cases in ejectment have reference to property clearly defined by survey, and described by metes and bounds, or courses and distances, and the questions which arise are the common propositions, incidental to disputes between neighboring owners with reference to the respective boundary lines, or to the

question of possession; nor are the propositions involved in this case such as they would be if the owner of a farm on the Missouri River or the Mississippi River should be contending for property which had become attached to his original domain by the ordinary process of accretion. It is respectfully submitted that it is only by showing a continuous seisin and possession of the accretion property as it forms, as well as showing the right in law to such accretion as formed upon the original property of plaintiff in error, that she can recover in this action. This she has not done.

The evidence shows:

1. That the Buchanan family, through Andrew Buchanan, acquired title to the land under the Easton patent as early as 1839, and by inheritance and mesne conveyances it came into the possesion of George Buchanan and his heirs; as early as 1857 the executors of George Buchanan's estate made a lease to Christian Liebke and his partners, Schrage & Letzig, of all the land east of Second street and to the river from Angelrodt street on the north to the southern boundary of the Buchanan property. This southern boundary was at or below Dock street, and the property lay from that point north and north-east of Rocky branch, and extended entirely across any property which would be covered by the side lines of the lots of plaintiff in error in 308 E., and extended to the river, so that the Buchanan property cut off all claim, if there had been any, to the accretions formed upon lots of plaintiff in error in City Block 308 E. The testimony of Capt. Liebke on the stand shows that pursuant to the lease of July 4th, 1857, which was duly recorded, a copy of which was offered

in evidence in this case, he took possession of all of that property, and continued in possession of it as the tenant of the Buchanan estate until the partition of the Buchanan estate, in 1866, and the laying out of the subdivision, which is known as Buchanan's Addition (a plat of which is in evidence). After said partition, Capt. Liebke continued to be the tenant of the several holders of the property under the partition, and, amongst others, of Sallie B. McPheeters, whose property extended entirely across the property included between plaintiff's extended side lines. He was also the tenant of the heirs, and in general showed by his testimony that he was in possession of the entire tract, or the greater part of it, from 1857 down to a very recent date, and during all that time was using the property for the purposes of his business, in connection with his saw mill, at Second and Buchanan streets; that the whole tract was covered many months in the year with logs, hauled out of the river by him for use in his saw mill, and that he used it in every way essential to the proper carrying forward of his business.

2. That in 1866 the Buchanan heirs laid out their subdivision, assigning lots to different heirs, and laying out streets, which lots and streets extended southwardly to Dock street, and across and east of the side lines of plaintiff's original lots in Block 308 E., and extended eastwardly toward the river. These proceedings were open, public, notorious. The plat was duly filed and remained on record from 1866 to the present time. Upon it appear the various divisions of lots assigned to the different heirs, and platted in their respective names. Between them, at stated intervals, were streets and alleys. The most casual observer of this plat can see,

without the use of instruments to mark the lines, that the extended side lines of the property of plaintiff in error in City Block 308 E. would run directly through the Buchanan property. Yet, from 1866 to the present time, the plaintiff in error has brought no proceedings against the Buchanan heirs to establish her claim to the accretions which are within the limits of their claim. Nor is the agreement and plat between Mrs. Tyler and Dr. McPheeters offered in evidence, an agreement which aids the plaintiff in error. It was contended by the defendant in error at the trial, and is contended now, that that agreement and plat were not competent evidence for any purpose. It was not pretended that all of the Buchanan heirs were in any sense parties to it. The paper showed on its face that they were not all parties. The evidence of Dr. McPheeters showed the same thing, and his evidence further discloses that so far as he endeavored to act for those whose names he signed he was without authority in the premises. We contended then, and still contend, that that paper should have been excluded, because it is not competent evidence in this case. To obviate the adverse claim of the Buchanans, no agreement short of an agreement with all of them could have any effect, even if the plaintiff in error had been a party to it. In the present instance, the plaintiff in error was not a party to the pretended agreement offered in evidence. It stands, then, uncontradicted that from 1866 to the present time the Buchanan property has stood upon plats and official records of the City of St. Louis between the property of plaintiff in error in City Block 308 E. and the river. *But suppose the McPheeters agreement and plat be admitted,* WHAT DID THAT PLAT SHOW? That in 1873 the persons who were attempting to plat the property, and to show what

property they severally claimed, did not claim a foot of property east of the wharf line, and that the plaintiff in error herself made no claim to any of the property in controversy in this case. The lines as marked down on that plat of property in the name of the several persons there noted, extended only to the WHARF, so that, if the plaintiff in error is permitted to use that plat for any purpose as tending to support her claim to any property east of Block 308 E., she proves herself out of Court in showing that in 1873, 22 years before she brought this proceeding, she was not claiming any of the property for which she now sues in this action.

3. Kennett street (now Hall street) was opened by the City in 1870, east of the original lots of plaintiff in error; the property east and west of Kennett street, which is within the extended side lines of plaintiff's original lots, was platted and treated as the property of the Tyler and Buchanan heirs; and Liebke and Schrage were named in the writ issued in the opening proceedings as lessees of the Buchanan heirs; damages were assessed in favor of the Tylers and Buchanans; plaintiff in error was a party to the proceedings; benefits were assessed against her original lots in Block 308 E, to help pay damages to the Tylers and Buchanans; her lots were sold for failure to pay such benefits, and in 1879, she having then been a widow for seven years, redeemed the original lots from the City. Here is the plaintiff in error claiming to be the owner of accretions through fifteen hundred feet which have been forming for fifty years, and she now seeks to oust the City of St. Louis from its public wharf, claiming to have been in actual possession of every foot of these accretions at all times; she was made a party to the proceedings to open

Kennett street, in which all of the property east of her original lots, and which she now claims as her own, was platted as the property of other people than herself; she was served with process; she permitted the proceedings to go through without objection; benefits were assessed against her, and seven years after she had become a widow, she paid the money, and redeemed the property which had been sold because of her failure to pay the benefits at the time they were assessed. But her counsel argues that she was a woman, and now an old lady, not understanding about business affairs. Where, then, were these astute agents who were able to testify concerning the property and the squatters, and who knew exactly how far the property extended on which taxes had been paid for twenty years, but who did not know that this property had been sold to pay the benefits for the opening of Kennett street?

4. The tax bills show that plaintiff in error paid taxes in lots on City blocks, bounded by streets, *i. e.*, by Hall street and the streets in Buchanan subdivision, and finally by the wharf, and that she did not pay taxes on the accretions foot by foot as they formed, but recognized the streets. The tax bills, therefore, are no evidence of continuous accretion to property. It seems hardly necessary to amplify this proposition. This statement includes all that need be said upon it. An examination of the tax bills will show the statement to be correct. How, then, can it be argued that the payment of the tax bills recognizing the intervening streets as they do is an evidence of continuous seisin and possession of the accretions as they formed? *And especially so, when the tax bills show that plaintiff in error never paid taxes for property east of First street till* 1875, *al-*

though the property extended 940 *feet east of First street as early as 1852.* (See plat "George Buchanan Division. Bremen."

5. Plaintiff in error has shown no seisin or possession of the property in controversy, *i. e.*, the land east of City Block 2544, constituting the wharf.

a. Plaintiff in error has paid no taxes on it.
See tax bills in evidence.

b. If the general statements of witnesses Barrett and Farrar, to the effect that taxes were paid to the river, could be considered as having any weight, when contradicted by the tax bills themselves, the payment of taxes would not be sufficient to create title, or show adverse possession.

Chapman v. Templeton, 53 Mo., 463, 1873.
Cashman v. Cashman, 123 Mo., 647, 1894.

The only testimony whatever that can be strained into evidence tending to show any possession of the wharf property, is to be found in the loose statements made by the witnesses Barrett and Farrar concerning the payment of taxes and the expulsion of squatters; and Farrar testified that he never put squatters off the property in suit till after he knew that Joy and the railroad were in possession. *This leaves the case with absolutely no specific testimony of possession of the strip east of the wharf line.* No witness identified the property in controversy in any way. As against that stands all of the evidence in the case, including all of the plats except Plat 1, which, according to the testimony of wit-

ness Joyce, was prepared by him at the request of counsel for plaintiff in error three or four days before the trial of this case in the Circuit Court, *drawing down the green lines from the wharf line to the river.* At the same time his own testimony, from what he called his field notes, and from which field notes he said the partial plat, Exhibit 1, was made, shows that the plaintiff in error herself, when, through agents, she had the property surveyed, only had the property surveyed *to the wharf line,* and that she claimed no part of the property on the wharf.

V.

THE ACTION OF PLAINTIFF IN ERROR IS BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff in error was not seized or possessed of any part of the land in controversy within ten years before the commencement of this action.

"No action for the recovery of any lands, tenements or hereditaments, or for the recovery of the possession thereof, shall be commenced, had or maintained by any person, whether citizen, denizen, alien, resident or non-resident of this State, unless it appears that the plaintiff, his ancestor, predecessor, grantor or other person under whom he claims, was seized or possessed of the premises in question within ten years before the commencement of such action."

Sec. 6764, R. S. 1889.

2. "In the action of ejectment it is essential to plaintiff's case that he show such a right as is necessary to a

recovery under our law. *A defendant in possession may rest upon that alone until the plaintiff exhibits a better title.*"

Duncan v. Able, 99 Mo. 188 (1889).

Plaintiff in error must recover on the strength of her own title, and not the weakness of title of defendant in error.

Marvin v. Elliot, 99 Mo. 616 (1889).
Mather v. Walsh, 107 Mo. 121 (1891).
Wilkerson v. Eilers, 114 Mo. 245 (1892).
West v. Bretelle, 115 Mo. 653 (1893).
Harwood v. Tracy, 118 Mo. 631 (1893).

3. There was outstanding adverse title in third persons, *i. e.*, the "Easton" title, later known as the "Buchanan" title, to the property north of Rocky branch and east of the original lots of plaintiff in error in Block 308 E; so that the prolongation of the side lines of her lots extended into said "Buchanan" property, and she held no title to any property north and east of Rocky branch.

a. The rule of the common law that the defendant in ejectment may show an outstanding title in a third person to defeat the suit, is not changed by statute in Missouri, but is the law of that State.

Guno v. Janis, 6 Mo. 330.
Norcum v. D'Oench, 17 Mo. 98.
Dunlap v. Henry, 76 Mo. 106.

VI.

THE CONCESSION AND AGREEMENT OF PLAINTIFF IN ERROR TO BE BOUND BY THE PLAT OFFERED IN CONNECTION WITH COLLINS' TESTIMONY, DEFEAT HER RIGHT OF RECOVERY.

During the trial, plaintiff in error offered in evidence the plat which *bounds the lots of plaintiff in error on the east by* A WHARF. Attorneys for plaintiff in error announced that she and they would be *bound by that plat.* This concession so made in Court, was of as much force and effect as any admission or agreement which plaintiff in error could, in any way, have made or entered into, and is as conclusive against her as if she and the defendant in error had, prior to the beginning of any litigation, entered into an arrangement with each other, for the purpose of avoiding controversy, that her eastern boundary should be the City's wharf.

Wash v. Mo. Pac. Ry. Co., 102 Mo. 582 (588).
Renshaw v. Ins. Co., 103 Mo. 595 (603).
Finkelnburg's App. Prac. 106.

VII.

THE CITY OF ST. LOUIS, HAVING EXPENDED LARGE SUMS OF MONEY FOR BUILDING DYKES AND REVETMENTS IN ORDER TO CONSTRUCT A GREAT PUBLIC WHARF UNDER ORDINANCE 5403, AS SHOWN BY THE RECORD, PROVIDING A COMPLETE WHARF SYSTEM FOR THE ENTIRE RIVER FRONT OF THE CITY,

AND HAVING GRANTED A LICENSE OR FRANCHISE TO USE A PART OF THE UNIMPROVED WHARF THUS FORMED TO THE RAILWAY COMPANY, AND HAVING LEASED A PART TO DEFENDANT JOY, AND THE RAILWAY COMPANY HAVING ALSO EXPENDED LARGE SUMS OF MONEY FOR THE CONNECTION OF ITS GREAT RAILWAY SYSTEM; AND THE PLAINTIFF IN ERROR HAVING STOOD BY FOR YEARS, IN SILENCE, AND PERMITTED THESE IMPROVEMENTS FOR THE PUBLIC BENEFIT TO BE MADE, IS ESTOPPED FROM BRINGING EJECTMENT AGAINST EITHER THE RAILROAD COMPANY OR THE CITY, AND CANNOT RECOVER IN THIS ACTION.

Provolt v. Railroad Co., 57 Mo. 256.
Masterson v. Railroad Co., 72 Mo. 633.
Kanaga v. Railroad Co., 76 Mo. 207.
Gray v. Railroad Co., 81 Mo. 126.
McClellan v. Railroad Co., 103 Mo. 295.
Railroad Co. v. Town Site Co., 103 Mo. 466-7-8.
Dodd v. Railroad Co., 108 Mo. 581.
Avery v. Railroad Co., 113 Mo. 561.
Webster v. Railroad Co., 116 Mo. 117.
Scarrett v. Railroad Co., 127 Mo. 298.
City of St. Joseph v. Landis, 54 Mo. App. 326.
Planet Prop. and Fin. Co. v. Railway, 115 Mo. 613.
House v. Montgomery, 19 M. A. 170.
Gibson v. St. L. A. & M. Assn., 33 Mo. A. 165.
School Dist. v. Lindsay, 47 M. A. 134.

It is not necessary to amplify this point, either by a discussion of the facts or by references to the cases in detail. The proposition seems clear. The cases speak for themselves.

VIII.

STREETS HAVING INTERVENED IN THE PROPERTY AS FORMED BY ACCRETION, THE PLAINTIFF IN ERROR IS NOT ENTITLED TO ALLUVION BEYOND THOSE STREETS.

This is a proposition which has been well settled in Missouri since 1875. It comes under the old rule of the side line law concerning alluvion. As stated by Judge Napton, in Smith v. Public School, 30 Mo. 290 (1886), at page 300, the rule is as follows: "The plain and simple principle upon which the right of alluvion is placed in the civil law is that he who bears the incidental burdens of an acquisition is entitled to its incidental advantages; consequently that the proprietor of a field bounded by a river, being exposed to the danger of loss from its floods, is entitled to the increment which, from the same cause, may be gradually annexed to it. This rule, however, did not apply to fields which the Romans termed limited, or *agri limitati. 'In agris limitatis jus alluvionis locum non habere constat.'*"

In that case it was held that land bounded by a street was not entitled to alluvion on the other side of the street. This proposition has been repeatedly sustained in this State since that time.

St. Louis v. Mo. Pac. Ry. Co., 114 Mo. 13 (1892).
Smith v. St. Louis, 21 Mo. 36 (1855).
Smith v. Schools, 30 Mo. 290 (1860).
St. Louis v. Lemp, 93 Mo. 437 (1877).
Eilenger v. Railroad, 112 Mo. 526 (1892).
Tatum v. St. Louis, 125 Mo. 657.

"Old decisions, and all those we have seen in this State on the subject, declare our law to be, that where a city lot is separated from the river by a street, owned in fee by the public (or in trust for the public * * *), the proprietor of the lot is not entitled to the alluvion formed upon the street opposite the lot. This proposition must now be considered as settled."

By Barclay, J., in City of St. Louis v. Mo. Pac. Ry. Co., 114 Mo. 13 (1892).

IX.

THE DEFENDANT IN ERROR HAVING CREATED THE LAND IN CONTROVERSY EXPRESSLY TO BUILD A WHARF, AND HAVING HELD OPEN, NOTORIOUS, CONTINUOUS, ADVERSE AND PEACEABLE POSSESSION THEREOF FOR MORE THAN TEN YEARS NEXT BEFORE THE BRINGING OF THIS ACTION, TITLE IS IN THE DEFENDANT IN ERROR, THE CITY OF ST. LOUIS.

1. "A claim of title to land, with actual, adverse possession thereof (of the requisite character), during the period prescribed by the statute, will vest the possessor with title without any paper support thereto whatever. This is no longer a debatable question, and calls for no more than this brief statement."

By Barclay, J., in Mather v. Walsh, 107 Mo. 121 (1891).
White v. Keller, 114 Mo. 479 (1892).

And this is so whether plaintiff knew the facts or not.

Wilkerson v. Eilers, 114 Mo. 245 (1892).

"Actual, continued, visible, notorious and hostile possession is tantamount to a claim of ownership."

By Burgess, J., in Wilkerson v. Eilers, 114 Mo. 245 (254).

And though "defendant took possession of a tract of land that he had no shadow of title to, was a wrong-doer, a trespasser when he entered into the possession, still he may become the absolute owner by thus occupying for the statutory period."

Wilkerson v. Eilers, 114 Mo. 245 (253).

No "color of title" is necessary.

Mather v. Walsh, 107 Mo. 121 (1891).

2. "When real estate is held adversely, the statute operates upon the title, and, when the bar is complete, the title of the original owner is defeated."

By Macfarlane, J., in Sherwood v. Baker, 105 Mo. 472 (1891).
Long v. K. C. Stock Yards Co., 107 Mo. 304 (1891).
Allen v. Mansfield, 82 Mo. 693 (1884).

In 1864, the City of St. Louis passed Ordinance 5403, declaring: "The wharf is hereby established as a public highway for wharf purposes, from the south side of Biddle street to the northern boundary of the City of St. Louis; and from the south side of Hazle street to the southern boundary of the City of St. Louis." The Ordinance then proceeds to describe the wharf line, and in-

cludes in that description the line which constitutes the eastern line of City Block 2544, as described in plaintiff's petition, and, therefore, the western line of the ninety feet which plaintiff is claiming in this action. In pursuance of the purpose set forth in that Ordinance, the City made its dykes and revetments, in order to cause the formation of the wharf to the wharf line along what is now the edge of the river; these dykes and revetments were placed in the river at great expense to the City, and when that wharf had been thus formed, the City placed its monuments at the several corners of the streets, including the corner of Buchanan street and the wharf, and the corner of Dock street and the wharf; those stone monuments were plainly visible; they were placed there by Engineer Moulton, of the City Harbor and Wharf Department, about 1884; witness Joyce, testifying for the plaintiff in error, on cross-examination stated that he knew where the monuments were; his plat No. 2, which he called his field notes, showed the stone at the corner of Dock street and the wharf, and the one at Buchanan street and the wharf was plainly described on his plat No. 2 (field notes). The line between the stone on Dock street and the stone on Buchanan street was described by him as the west line of the wharf, and his plat or field notes showed the wharf plainly marked, and his testimony *showed that Mrs. Sweringen,* through her agents, had had the property she claimed surveyed at the request of her agents, who according to witness Joyce, *instructed him to survey her property to the line of the wharf.* The monuments were familiar to Capt. Liebke, and it was testified by him that they were plainly visible. The wharf, though unimproved, was used, as the testimony showed, for the landing of steamboats, and particularly for the landing of

rafts, and there was testimony of Capt. Liebke that near by, on one of the revetments, were posts, placed there with the permission of the City, for the purpose of enabling boats or rafts to make fast to the wharf. Had this been private property, and had the defendant placed a fence along the line of the property, no one would have questioned for a moment but that that was a taking possession open, notorious, and adverse. It is not the usage or practice of cities to fence in their wharfs. They mark the lines of the wharf by monuments, and that was done by the defendant in error in this case. True, the City did not improve its wharf in the sense of laying a stone levee there, or other work of that kind, but this is not necessary. The City has large quantities of what is known as unimproved wharf, which is recognized in the City Charter (Art. III, Sec. 26, Par. 4), and which the City is permitted to lease under certain conditions. In the case at bar, the City had leased to Joy, as early as 1891, a large part of the unimproved wharf, on or near the ninety feet claimed by plaintiff in error, and all the property leased to Joy is contained within the large description in the petition of plaintiff in error. In short, the City has done with this property everything that is necessary to do with an unimproved wharf, and it has treated this property as a wharf for more than ten years, and plaintiff in error, by her acts, has plainly recognized the existence of this wharf, and the City's claim to the property in controversy as a wharf.

X.

EVEN IF THE TITLE TO THE PROPERTY IN QUESTION WERE NOT IN THE DEFENDANT IN ERROR, THE CITY OF ST. LOUIS, AND HAD ORIGINALLY BEEN IN THE PLAINTIFF IN ERROR,

THE DEFENDANT HAS ACQUIRED AN EASEMENT IN THE PROPERTY USED AS A WHARF BY THE PUBLIC FOR MORE THAN TEN YEARS, WITH THE ACQUIESCENCE OF THE PLAINTIFF IN ERROR, AND PLAINTIFF IN ERROR IS ESTOPPED FROM CLAIMING TITLE OR POSSESSION IN THIS ACTION.

Adverse use of land by the public for ten years will bar a recovery.

Price v. Town of Breckenridge, 92 Mo. 378 (1887).
State v. Walters, 69 Mo. 463 (1879).
State v. Young, 27 Mo. 260.

XI.

SO FAR AS THE PLAINTIFF IN ERROR IS CONCERNED, SHE HAS DEDICATED THE STRIP IN QUESTION TO PUBLIC USE AS A WHARF. SHE HAS MADE A COMMON LAW DEDICATION OF THE SAME, AND IT HAVING BEEN ACCEPTED BY THE CITY, THE LATTER HAVING GRANTED THE RAILROAD COMPANY A RIGHT OF WAY OVER IT, AND LEASED IT AS A PART OF THE UNIMPROVED WHARF, THE DEDICATION IS COMPLETE.

The owner of land may, without deed or writing, dedicate it to public use.

Elliott's Roads and Streets, p. 91 *et seq.*
McKee v. St. Louis, 17 Mo. 184.

No particular form is necessary.

Rector v. Hartt, 8 Mo. 448.

Dedication may be shown by proof of intention of the owner to make it.

Stacey v. Miller, 14 Mo. 478.
Gamble v. St. Louis, 12 Mo. 617.

Existence of a grant is not necessary to a dedication.

Rutherford v. Taylor, 38 Mo. 315.

Whenever the intention is manifest, the dedication is made so far as the owner is concerned, and if accepted by the public, the dedication is complete.

Pierce v. Chamberlain, 82 Mo. 618.

Acceptance is in time if made before the offer to dedicate is withdrawn.

Price v. Town of Breckenridge, 92 Mo. 278.

Among the acts which were held to amount to a dedication, was the fact that the owner did not return the land for taxation.

Skrainka v. Allen, 2 Mo. Ap. 387.

The Statute, Sec. 7531, R. S. 1889, Sec. 6685 R. S. 1879, requires the owner to make return under oath of *all* his real estate. The presumption of the law is that, in the absence of a showing to the contrary, the owner has obeyed the law, that he has made "a list of all the real estate and the value thereof" owned by him and returned the same under oath. This must be the presumption in this case.

So that the proof is that ever since the strip sued for became land, that is to say, ever since 1874, the plaintiff in error made returns of her real estate, and never in a single year did she claim to own the strip in question. Not only this, but she did make returns of the strip west of the wharf line in Block 2544, for in each year she was assessed on it and paid the taxes. And the receipts for the taxes for every year show that the strip in Block 2544 was described as being on the "wharf" and its boundary on the east to be the "wharf," and the presumption is that she returned the land for taxation in that way.

So, for nearly twenty years she never claimed the land as the law required her to do. When called on to return *all* her real estate for taxation to meet the burdens of State and municipality, she made no claim to the strip in question, nor did any one else. It was only after she found that a railroad company had placed its tracks on it as public property, and that the city was deriving some income from it as part of the unimproved wharf, that she asserted a claim to it.

During all the years that she is called on to make and return a list of all her lands in the city, she does so, and by omitting the strip in question she says that it is not hers. She pays year after year taxes on the strip in Block 2544, and sees that it is bounded east by the "wharf," and she never says nay.

In a case of this kind all the presumptions are against the person now asserting title.

She will be presumed to intend the consequences of her own acts and be bound by them accordingly. The principle of common law dedication is founded on the

doctrine of equitable estoppel. The Supreme Court of the United States (Cincinnati v. White, 6 Peters 431, and Morgan v. Railroad Company, 96 U. S. 716) says that "the law considers it in the nature of an estoppel in pais."

"The public, as well as individuals, have a right to rely on the conduct of the owner as indicative of his intent. If the acts are such as would fairly and reasonably lead an ordinarily prudent man to infer an intent to dedicate, and they are so received and acted upon by the public, the owner cannot, after acceptance by the public recall the appropriation."

Elliott's Roads and Streets, page 92, *et seq.*

"The party is estopped on grounds of public policy and good faith from repudiating his own representations."

Greenleaf Evidence, Sec. 207.
Noyes v. Ward, 19 Conn. 250.

The above principles have been enunciated and applied by the Courts in Missouri in numerous cases of implied dedication, some of which are cited above. And we beg the Court's attention to the case of Skrainka v. Allen, 2 Mo. Ap. 387, as being peculiarly in point.

In this case the defendant had filed a plat of an addition to the City, dedicating the streets shown thereon so far as they were on his land. Subsequently he acquired that part of the land shown on the plat which belonged to others when the plat was filed. Thereafter he re-

turned for taxation only the land included in the blocks, but none of the land included in the streets shown on the plat. It was claimed that this fact operated to make a common law dedication of the street. The Court of Appeals said:

"Looking, then, to what Mr. Allen did in respect of his property after May 8, 1871, we find that he has not only *not claimed,* but has positively *disclaimed,* ownership over any part of Arrow street since 1871. At the lowest this evidence tends to the conclusion that Mr. Allen intended and desired to be understood, not only by possible purchasers of lots in his addition, *but by the State, City and County,* that Arrow street was relinquished to the public as a highway after his acquisition of the triangular piece of land *a b c,* which enabled him to give effect to the intention previously declared."

The present case is to all purposes the same in its facts. For twenty years Mrs. Sweringen, the plaintiff in error, not only did not claim this strip lying in the wharf, but she has, during the same period positively disclaimed ownership of it. For twenty years she did not claim the strip, and thereby evaded paying taxes on it, which fact in the Skrainka case, *that is, the wish to escape taxation,* was referred to by the Court as one of the reasons why the property owner in that instance found it advantageous to have the street "not regarded as private property."

After, for more than twenty years, returning the strip in Block 2544 as being on the "wharf," and bounded on the east by the "wharf;" after, for more than twenty years, paying taxes on the said strip in Block

2544 and receiving receipts in which the same is described as being on the "wharf" and bounded east by the "wharf;" after, for more than twenty years, she has thus escaped the payment of taxes on the wharf strip by disclaiming ownership of the same and thus evaded the burdens of the State and city revenue; after the city authorities have, acting on this disclaimer, included the strip on the city plats as part of the public wharf, in the Assessor's Books, in the plat accompanying the opening of Hall street, which plat was introduced in evidence, and to which proceeding Mrs. Sweringen, plaintiff in error, was a party, and on the plat which their own witness Joyce produced as having been taken from the city plats; after all this, she now comes forward and says that she owns this strip, and asks the Court to disregard all of her acts during twenty years, disclaiming ownership and recognizing it as part of the public wharf, and to give it to her.

If ever there was a case in which a person should be held estopped by acts inconsistent with her present claim, this case presents one. It has all the elements which constrained the Court of Appeals to hold in the Skrainka case, that the street had been dedicated to public use, and this Court ought to say that a person, after disclaiming to the public, for more than twenty years, ownership of property, and thereby escape the payment of taxes and other public burdens thereon, is estopped. If the plaintiff in error can thus act, and not be estopped, it means that the great and just principle, that men are to be bound by their acts and conduct, has no force.

The endeavor of the plaintiff in error, by the loose testimony of Farrar and Barrett, to impress the Court

that she had paid taxes on this strip of wharf property in suit all the time, and the difficulty defendant in error met with in compelling the production of the tax receipts since 1870, and in the introduction of the Assessor's plat books, show that the plaintiff in error realized the importance of these facts and the effect they would have on the case.

As the case stands under the evidence the Court must assume that Mrs. Sweringen, plaintiff in error, did for all these twenty and more years return all her real estate for taxation, and never returned the strip in question as belonging to her. The evidence from the tax receipts does show that for all these years she did return a strip 90 feet wide in Block 2544, and that this was described as being on the "wharf," and bounded east by the "wharf." The Court must presume this, because it is a presumption of law.

"It is a presumption of law *that every one has conformed to the law,* and the burden of proof is on him who alleges the contrary."

19 Am. & Eng. Enc. of Law, p. 42, and cases cited.

For the reasons stated we submit that the judgment of the Supreme Court of Missouri should be affirmed.

Respectfully,

CHAS. W. BATES,
Attorney for Appellant.

B. SCHNURMACHER,
CHAS. CLAFLIN ALLEN,
Of Counsel.

Supreme Court of the United States.

No. 187—October Term, 1901.

Martha J. Sweringen, Plaintiff in Error, vs. The City of St. Louis. } In error to the Supreme Court of the State of Missouri.

[April 7, 1902.]

The plaintiff in error, being the plaintiff below, obtained judgment in the State Circuit Court for the city of St. Louis for the recovery of certain land described in the judgment. Upon appeal to the Supreme Court of the State of Missouri this judgment was reversed, (151 Mo. 348,) and the plaintiff has brought the case here by writ of error.

The action was ejectment for land described in the petition, which also set np a claim for the rents and profits. The answer of the city denied all the allegations of the petition, set up adverse possession for ten years and acquiescence on the part of the plaintiff in the possession and use of the premises by the city as and for a public wharf. The property described in the petition is situate in the city of St. Louis, and is bounded on the east by the Mississippi River. The parties went to trial before the court, a jury being waived, and after the evidence was in, the issues were found in favor of the plaintiff, although she recovered judgment for but a portion of the property described in her petition, the portion for which she recovered being part of a public wharf of the city running along the west line of the river, and being ninety feet along the line of the wharf from north to south, and running back its whole depth from the east line on the river to its rear or western line.

The question involved in the case upon the merits is in substance whether the plaintiff is entitled to the alluvion caused by the recession of the Mississippi River, to the extent of many hundred feet east of the point where it flowed in 1852, at the time when the plaintiff's predecessor took title to the property by virtue of a patent from the United States called the "Labeaume patent." The trial court held she was and the Supreme Court held she was not.

On the trial the plaintiff offered in evidence as the source of her title a patent from the United States to Labeaume, dated in 1852. It was objected to as not tending to support the issues in the case and as not showing plaintiff's grantor a riparian owner. The objection was overruled and the patent received in evidence. It recites the proceedings which preceded the issuing of the patent, from which recitals it appears a concession was made of the land described, by the lieutenant governor of the Spanish province of Upper Louisiana, July 15, 1799, and a survey thereafter made, and the proceedings confirmed in accordance with the acts of Congress relating to lands in the province named, approved respect-

ively March 2, 1805, and March 3, 1807, and after some other recitals a description of the land conveyed is set forth, which commences as follows:

"Begin at a stake set on the right bank of the Mississippi River between high and low-water mark and on the extension line produced eastwardly from Labeaume's southern ditch, the lower and most eastern corner of this survey, and the upper and most northern corner of the survey of Joseph Brazeau, numbered three thousand three hundred and thirty-two," &c.

Then follow in the patent what amounts to several printed pages, giving in detail the courses and distances of the outboundaries of the land described in the patent, from the southeastern corner along to the western limit, thence towards the north and thence back towards the east until the description is brought to the northeastern corner of the survey, which is also a corner of the city of St. Louis, being the northern termination of the northwestern boundary line thereof. This corner is marked "F" on the plat accompanying the patent, and the description then proceeds to give the eastern line of the grant parallel with the Mississippi River, and commences that line in the following language: "From the corner of 'F' down the right bank of the Mississippi River, with the meanders thereof, between high and low-water mark, south nine degrees east," &c. The description then goes on with six or eight different courses and distances, altering with the meanders of the river, down "to the place of beginning."

It appears that the east boundary line of the land described in this patent was at the time of the execution of the patent, in 1852, several hundred feet west of the waters of the river, and at the present time is about fifteen hundred feet west thereof. Between those waters and the east line of the grant there was then what is termed on the plat accompanying and referred to in the patent a sand beach, which was, as stated, several hundred feet in width, thus separating by that beach the east line of the grant from the river.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

A motion was made in this case to dismiss the writ of error for lack of jurisdiction, and a decision of the motion was reserved until after an argument of the case upon the merits. The whole case having been argued, it becomes necessary to dispose of the motion to dismiss.

The motion is based upon the averment that there is no Federal question involved, and that even if there were one, it was not properly raised in the court below. We think that, for the reasons now to be stated, the motion to dismiss must be granted.

In our judgment there is no Federal question arising by reason of plaintiff's claim under the patent put in evidence by her as the source of her title to the land in question. With reference to the first clause of section 709 of the Revised Statutes, it appears plainly that the validity of the patent has never been questioned. Nor has the validity of any treaty or

statute of or authority exercised under the United States been drawn in question. It is a pure question of the construction of the language used in the patent, whether the land granted therein reached the waters of the Mississippi River on the east, or whether, according to the courses and distances contained in the patent, the eastern limit of the land conveyed was some hundreds of feet west of the river. It was really a question of fact as to how far east the measurements of the courses and distances carried the boundary. There was no contention made as to the authority of the government to convey the land to the bank of the river where the water was actually flowing, if it chose so to do. The decision did not touch the question as to how far a grant by the government, of land bounded by the waters of a navigable stream, would carry the title, whether to high water or low water, or out to the middle of the stream. If the grant from the United States had been bounded by the waters of a navigable river, and the right to make the grant to the extent claimed by the grantee, had been denied by a grantee under a State, the denial of the validity of the authority exercised in making such grant might bring the question of construction within the principle decided in *Packer* v. *Bird*, (137 U. S. 661,) and *Shively* v. *Bowlby*, (152 Id. 1.) In *Packer* v. *Bird*, it was a question how far a grant carried the title to land bounded by the margin of the Sacramento River, or, as stated by Mr. Justice Field, who delivered the opinion of the court in that case, "The question presented is, whether the patent of the United States, describing the eastern boundary of the land as commencing *at a point on the river*, which was on the right and west bank, and running southerly *on its margin*, embraces the island within it, or whether, notwithstanding the terms of apparent limitation of the eastern boundary to the margin of the river, the patent carries the title of the plaintiff holding under it to the middle of the stream. The contention of the plaintiff is that the land granted and patented, being bounded on the river, extends to the middle of the stream, and thus includes the island. It does not appear in the record that the waters of the river at the point where the island is situated are affected by the tides; but it is assumed that such is not the case. The contention of the plaintiff proceeds upon that assumption." The opinion then proceeds with an examination of the question of what was the common law upon the subject, and whether that law had been adopted in the State of California where the land was. It was stated that it was "undoubtedly the rule of the common law that the title of owners of land bordering on rivers above the ebb and flow of the tide extends to the middle of the stream, but that where the waters of the river are affected by the tides, the title of such owners is limited to ordinary high-water mark. The title to land below that mark in such cases is vested, in England in the Crown, and in this country in the State within whose boundaries the waters lie, private ownership of the soils under them being deemed inconsistent with the interest of the public at large in their use for purposes of commerce."

It was said there was much conflict of opinion in the Western States as to what the true doctrine was, whether it was the common law, which decided the question by the ebb and flow of the tides, or the law of actual navigability of the river, and in the case then before the court it accepted the view of the Supreme Court of California in its opinion as expressing the law of that State, "that the Sacramento River being navigable in fact, the title of the plaintiff extends no farther than the edge of the stream." It was in a case involving such facts that the remark was made, in the course of the opinion, that the courts of the United States would construe the grants of the general government without reference to the rules of construction adopted by the States for their grants, but that whatever incidents or rights attached to the ownership of property conveyed by the government would be determined by the States, subject to the condition that their rules do not impair the efficacy of the grants or the use and enjoyment of the property by the grantee. It was a necessary case for the court to adopt one or the other of these two conflicting rules for the construction of the grants of the general government, and in making its decision as to the proper construction in such cases the court held that the question of construction became one of a Federal nature.

Shively v. *Bowlby*, (*supra*,) was much the same case, the controversy being as to the extent of the grant of the United States government of land bounded by the Columbia River in the State of Oregon. The question was as to how far such a grant extended, (the actual limitations of the boundaries, by the language used, not being disputed,) whether in legal effect it granted lands under the water of the river, and the question was held to be a Federal one. In both cases it was decided that a grant by the Federal government of land within a State, bounded by a navigable river, did not extend so far as to convey land below ordinary high water, and beyond that point the right of a grantee was governed by the law of the State, and the decisions of those courts were therefore in each instance affirmed.

In this case no such question arises. It is not the case of granting lands bounded by the waters of a navigable river and a claim made to an island in the river in one case and to the lands under water in the other, where the validity of the authority exercised, to the extent claimed, was drawn in question and the right to convey the land denied. Here no question is made as to the authority of the government to convey the land to the water's edge if it chose to do so. The validity of its conveyance under the authority of the acts of Congress referred to in the patent was not in any way controverted or drawn in question by defendant, but it was simply maintained that making correct measurements and construing the language of the grant in the usual and ordinary way applicable to such instruments, (not at all a Federal question) the courses and distances set forth in the patent and its general description of the land conveyed did not

as matter of fact bring the eastern boundary to the waters of the river. The issue thus made was not one of "validity," but one of fact as to where by the language of the grant was its eastern boundary line. Where such a question alone is involved there is not drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and there is in fact no question of a Federal nature decided. As was remarked in *Cook County* v. *Calumet &c. Dock Company*, (138 U. S. 635, 653:) "The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done by such authority is disputed. The validity of the authority here was not primarily denied, and the denial made the subject of direct inquiry. (*United States* v. *Lynch*, 137 U. S. 280; *Baltimore & Potomac Railroad* v. *Hopkins*, 130 U. S. 210.)"

In the first of these two case cited, it was held that to enable this court to entertain jurisdiction under a writ of error upon the ground that the validity of an authority exercised under the United States was drawn in question, the validity of such authority must have been denied directly and not incidentally. In the case before us, there was no denial of the validity of the grant, directly or incidentally. In the *Hopkins* case (*supra*) it was held that the validity of a statute is drawn in question when the power to enact it is fairly open to denial and is denied, but not otherwise.

In *Blackburn* v. *Portland Gold Mining Company*, (175 U. S. 571,) Mr. Justice Shiras, in delivering the opinion of the court dismissing a writ of error, refers to several cases which we think are relevant here. In *Borgmeyer* v. *Idler*, (159 U. S. 408,) it was held that the matter in controversy, being money received by one of the parties as an award under a treaty of the United States with a foreign power, providing for the submission of claims against that power to arbitration, did not in any way draw in question the validity or construction of the treaty. Here there is no question made of the validity of the authority exercised, but only a question of how far in fact it was exercised.

In *Gillis* v. *Stinchfield*, (159 U. S. 658,) the dispute arose concerning the ownership of a mining claim. In the course of the opinion in the *Blackburn* case, referring to the *Gillis* case, it was said: "It is true that this court put its judgment on the ground that the judgment of the State Supreme Court was based upon an estoppel, deemed by that court to operate against the plaintiff in error upon general principles of law, irrespective of any Federal question. Still the case is authority for the proposition that controversies in respect to titles derived under the mining laws of the United States may be legitimately determined in the State courts, and that to enable the court to review the judgment in such a case it must appear not only that the application of a Federal statute was involved, but that the controversy was *determined by a construction put upon the statute* adverse to the contention of one of the parties."

Here there was no construction put upon any statute, nor upon any authority exercised, but only a construction upon the language used in the patent, admitting the validity of all statutes, and also the validity of any authority actually exercised, and the only and simple question decided was that the language used in the patent, assuming its validity, bounded the land conveyed under it, not by the river on the east, but by a line which was separated from the waters of the river by a sand beach several hundred feet in width.

The *Blackburn* case was followed by *Shoshone Mining Company* v. *Rutter*, (177 U. S. 505,) which reaffirmed the doctrine.

We conclude that no Federal question arises upon the construction of the language of the patent given it by the State court, under the first clause of section 709 of the Revised Statutes.

Nor was any Federal question raised under the third clause of that section. Under that clause no title, &c., or authority exercised under the United States, was specially set up and claimed by the plaintiff, and there was no decision against any title, &c., specially set up or claimed by the plaintiff. There was no decision of any Federal question whatever. We do not hold it was necessary to plead the claim in order to show it was specially set up, but it must have been so referred to and mentioned as to show that it was present in the minds of the parties claiming the right, or must have been in some way presented to the court. (*Oxley Stave Co.* v. *Butler Co.*, 166 U. S. 648; *Green Bay &c. Co.* v. *Patten Co.*, 172 Id. 58; *Columbia Water Power Co.* v. *Columbia &c. Co.*, 172 Id. 475; *Dewey* v. *Des Moines*, 173 Id. 193, 199.) And the decision that the grant did not extend to the river bank was not a denial of any authority claimed, but was only a decision that the grant did not in fact extend to the river, or, in other words, that the authority was not exercised. It was mere interpretation of the authority really exercised and not any denial of authority.

The plaintiff also claims that she obtained title to the land in question, if not under the patent, then by virtue of the provisions of the act of Congress, approved June 6, 1874, (18 Stat. 62,) the first section of which is set forth in the margin.*

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*CHAP. 223. An act obviating the necessity of issuing patents for certain private land claims in the State of Missouri, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the right, title, and interest of the United States in and to all of the lands in the State of Missouri which have at any time heretofore been confirmed to any person or persons by any act of Congress, or by any officer or officers, or board or boards of commissioners, acting under and by authority of any act of Congress, shall be, and the same are hereby, granted, released, and relinquished by the United States, in fee simple, to the respective owners of the equitable titles thereto, and to their respective heirs and assigns forever, as fully and as completely, in every respect whatever, as could be done by patents issued therefor according to law.

It does not appear in the record that any such claim was made in the trial court or upon appeal in the Supreme Court of the State. There was no denial of the validity of that act by the decision in question, and when the plaintiff introduced the *patent* in evidence there certainly was no claim thereby specially set up under the *act of Congress.* This claim does not seem ever to have been thought of until the case reached this court. At any rate, the record does not show that it was pleaded, proved, referred to, mentioned, or in any manner set up or claimed. The act does not in any event touch the point, as it refers to those cases in which no patents had been given, and does not cover the case where one had been issued and received in entire fulfillment of the obligations of the government. As in our opinion the case involves no Federal question, the motion to dismiss will be granted on the ground of lack of jurisdiction.

Dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.